

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 21. DEPARTMENT OF HEALTH SERVICES MENTAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
Chapter 21	Amend
R9-21-101	Amend
R9-21-102	Amend
R9-21-103	Repeal
R9-21-103	Renumber
R9-21-103	Amend
R9-21-104	Renumber
R9-21-104	Amend
R9-21-105	Renumber
R9-21-105	Amend
R9-21-106	Renumber
R9-21-107	Renumber
R9-21-201	Amend
R9-21-202	Amend
R9-21-203	Amend
R9-21-204	Amend
R9-21-205	Amend
R9-21-206	Amend
R9-21-206.01	New Section
R9-21-207	Amend
R9-21-208	Amend
R9-21-209	Amend
R9-21-210	Amend
Article 3	Amend
R9-21-315	Renumber
Article 4	Amend
R9-21-401	Renumber
R9-21-401	Amend
R9-21-402	Renumber
R9-21-402	Amend
R9-21-403	Renumber
R9-21-403	Amend
R9-21-404	Renumber
R9-21-404	Amend
R9-21-405	Renumber
R9-21-405	Amend
R9-21-406	Renumber
R9-21-406	Amend
R9-21-407	Repeal
R9-21-407	Renumber
R9-21-407	Amend
R9-21-408	Repeal
R9-21-408	Renumber
R9-21-408	Amend

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R9-21-409	Renumber
R9-21-409	Amend
R9-21-410	Renumber

2. The authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A), and 36-136(F)

Implementing statutes: A.R.S. §§ 36-502, 36-550.01, 36-550.03, 36-550.04, 36-550.05, 36-550.06, 36-550.08, and 36-3403(A)(4)

3. The proposed effective date of the rule:

To be determined—upon filing of the Notice of Final Exempt Rulemaking with the Office of the Secretary of State.

4. A list of all previous notices appearing in the Register addressing the proposed exempt rule:

Notice of Public Information: 9 A.A.R. 1565, May 23, 2003

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Ann Froio, Division Chief for Compliance

Address: Department of Health Services, Division of Behavioral Health Services
2122 E. Highland, Suite 100
Phoenix, AZ 85016

Telephone: (602) 381-8999

Fax: (602) 553-9141

or

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services
1740 W. Adams, Suite 102
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

6. An explanation of the rule, including the agency's reason for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:

The proposed exempt rules incorporate changes that clarify meaning, eliminate inconsistencies with the licensing rules in 9 A.A.C. 20, and reflect statutory changes and current standards of practice. The changes will be promulgated in rule under exempt rulemaking procedures according to Laws 2001, Ch. 367 (SB 1353).

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

Laws 2001, Ch. 367 (SB 1353) provides exemption from the provisions of Title 41, Chapter 6.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

The Department has scheduled the following public hearing:

Date: June 23, 2003

Time: 2:00 p.m.

Address: 2122 E. Highland, Suite 100
Aspen Conference Room
Phoenix, AZ 85016

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Persons interested in submitting written formal comments should submit them to one of the persons listed in item #5 by 5:00 p.m. on June 23, 2003.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting one of the persons listed in item #3. Requests should be made as early as possible to allow time to arrange the accommodation.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

CHAPTER 21. DEPARTMENT OF HEALTH SERVICES

~~MENTAL BEHAVIORAL~~ HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

ARTICLE 1. GENERAL PROVISIONS

Section

- R9-21-101. Definitions
- R9-21-102. Applicability
- ~~R9-21-103. Principles~~
- ~~R9-21-104. R9-21-103.~~ Computation of Time
- ~~R9-21-105. R9-21-104.~~ Office of Human Rights; Human Rights Advocates
- ~~R9-21-106. R9-21-105.~~ Human Rights Committees
- ~~R9-21-107. R9-21-106.~~ State Protection and Advocacy System
- ~~R9-21-107.~~ Renumbered

ARTICLE 2. RIGHTS OF PERSONS WITH SERIOUS MENTAL ILLNESS

Section

- R9-21-201. Civil and Other Legal Rights
- R9-21-202. Right to Support and Treatment
- R9-21-203. Protection from Abuse, Neglect, Exploitation and Mistreatment
- R9-21-204. Restraint and Seclusion
- R9-21-205. Labor
- R9-21-206. Competency ~~and Consent~~
- ~~R9-21-206.01. Informed Consent~~
- R9-21-207. Medication
- R9-21-208. Property and Possessions
- R9-21-209. Records
- R9-21-210. Policies and Procedures of Service Providers

ARTICLE 3. INDIVIDUAL SERVICE PLANNING FOR ~~MENTAL BEHAVIORAL~~ HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

Section

- ~~R9-21-315.~~ Renumbered

ARTICLE 4. ~~APPEALS, GRIEVANCE GRIEVANCES, AND REQUESTS FOR INVESTIGATION PROCEDURE~~ FOR PERSONS WITH SERIOUS MENTAL ILLNESS

Section

- ~~R9-21-315. R9-21-401.~~ Appeals
- ~~R9-21-401. R9-21-402.~~ Scope
- ~~R9-21-402. R9-21-403.~~ Initiating a Grievance or Investigation
- ~~R9-21-403. R9-21-404.~~ Persons Responsible for Resolving Grievances and Requests for Investigations
- ~~R9-21-404. R9-21-405.~~ Preliminary Disposition

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~~R9-21-405.~~ ~~R9-21-406.~~ Conduct of Investigation
~~R9-21-407.~~ Further Appeal to Administrative Hearing
~~R9-21-406.~~ ~~R9-21-407.~~ Administrative Appeal
~~R9-21-408.~~ Judicial Review
~~R9-21-409.~~ ~~R9-21-408.~~ Notice and Records
~~R9-21-410.~~ ~~R9-21-409.~~ Miscellaneous
~~R9-21-410.~~ Renumbered

ARTICLE 1. GENERAL PROVISIONS

R9-21-101. Definitions

- A. In this Chapter, unless the context otherwise requires, the terms defined in A.R.S. § 36-501 shall have the same meaning ~~set forth as in that Section A.R.S. § 36-501.~~
- B. In this Chapter, unless the context otherwise requires:
1. "Abuse" means, with respect to a client, the infliction of, or allowing another person to inflict or cause, physical pain or injury, impairment of bodily function, disfigurement or serious emotional damage which may be evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior. Such abuse may be caused by acts or omissions of an individual having responsibility for the care, custody or control of a client receiving behavioral health services under this Chapter. Abuse shall also include sexual misconduct, assault, molestation, incest, or prostitution of, or with, a client under the care of personnel of a mental health agency.
 2. "Agency director" means the person primarily responsible for the management of an outpatient or inpatient mental health agency, service provider, regional authority or the deputy director of the division, or their designees.
 3. "AHCCCSA" means the Arizona Health Care Cost Containment System Administration.
 4. "Applicant" means an individual who:
 - a. Submits to a regional authority an application for behavioral health services under this Chapter or on whose behalf an application has been submitted; or
 - b. Is referred to a regional authority for a determination of eligibility for behavioral health services under this Chapter.
 - 4.5. "ASH" means the Arizona State Hospital.
 6. "Authorization" means written permission for a mental health agency to release or disclose a client's record or information, containing:
 - a. The name of the mental health agency releasing or disclosing the client's record or information;
 - b. The purpose of the release or disclosure;
 - c. The individual, mental health agency, or entity requesting or receiving the client's record or information;
 - d. A description of the client's record or information to be released or disclosed;
 - e. A statement:
 - i. Of permission for the mental health agency to release or disclose the client's record or information; and
 - ii. That permission may be revoked at any time;
 - f. The date when or conditions under which the permission expires;
 - g. The date the document is signed; and
 - h. The signature of the client or, if applicable, the client's guardian.
 7. "Behavioral health issue" means an individual's condition related to a mental disorder, personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.
 8. "Behavioral health service" means the assessment, diagnosis, or treatment of an individual's behavioral health issue.
 - 5-9. "Burden of proof" means the necessity or obligation of affirmatively proving the fact or facts in dispute.
 - 6-10. "Case manager" means the person responsible for locating, accessing and monitoring the provision of services to clients in conjunction with a clinical team.
 - 7-11. "Client" means an individual who is seriously mentally ill and is being evaluated or treated for a mental disorder by or through a regional authority.
 - 8-12. "Client record" means the written compilation of information that describes and documents the evaluation, diagnosis or treatment of a client.
 - 9-13. "Client who needs special assistance" means a client who has been:
 - a. Deemed by a qualified clinician, case manager, clinical team, or regional authority to need special assistance in participating in the ISP or ITP process, which may include, but is not limited to:
 - i. A client who requires 24-hour supervision;
 - ii. A client who is, in fact, incapable of making or communicating needs but is without a court-appointed fiduciary; or
 - iii. A client with physical disabilities or language difficulties impacting the client's ability to make or communicate decisions or to prepare or participate in meetings; or

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- b. Otherwise deemed by a program director, the deputy director of the Division, or a hearing officer to need special assistance to effectively file a written grievance, to understand the grievance and investigation procedure, or to otherwise effectively participate in the grievance process under this Chapter.
- ~~10-14.~~ 14-14. "Clinical team" refers to the interdisciplinary team of persons who are responsible for providing continuous treatment and support to a client and for locating, accessing and monitoring the provision of ~~mental behavioral~~ health services. A clinical team consists of a psychiatrist, case manager, vocational specialist, psychiatric nurse, and other professionals or paraprofessionals, such as a psychologist, social worker, consumer case management aide, or rehabilitation specialist, as needed, based on the client's needs. The team shall also include a team leader who is a certified behavioral health supervisor under Laws 1992, Ch. 310.
- ~~11-15.~~ 14-15. "Community services" means ~~community mental health~~ services required to be provided under ~~A.R.S. § 36-550 et seq.~~ A.R.S. Chapter 4, Article 10 and includes, but is not limited to, such as clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, day treatment, vocational training and opportunities, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance.
- ~~12-16.~~ 14-16. "Condition requiring investigation" means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or condition which appears to be dangerous, illegal, or inhumane, including a client death.
- ~~13-17.~~ 14-17. "County Annex" means the Maricopa County Psychiatric Annex of the Maricopa Medical Center.
- ~~14-18.~~ 14-18. "Court-ordered treatment" means treatment ordered by the court under A.R.S. Title 36, Chapter 5.
- ~~15-19.~~ 14-19. "Court-ordered evaluation" means evaluation ordered by the court under A.R.S. Title 36, Chapter 5.
- ~~16-20.~~ 14-20. "Crisis services" or "emergency services" means immediate and intensive, time-limited, crisis intervention and resolution services which are available on a 24-hour basis and may include information and referral, evaluation and counseling to stabilize the situation, triage to an inpatient setting, clinical crisis intervention services, mobile crisis services, emergency crisis shelter services, and follow-up counseling for clients who are experiencing a psychiatric emergency.
- ~~17-21.~~ 14-21. "Dangerous" as used in Article 4 of this Chapter means a condition that poses or posed a danger or the potential of danger to the health or safety of any client.
- ~~18-22.~~ 14-22. "Department" means the Arizona Department of Health Services.
- ~~19-23.~~ 14-23. "Designated representative" means a parent, guardian, relative, advocate, friend, or other person, designated by a client or guardian who, upon the request of the client or guardian, assists the client in protecting the client's rights and voicing the client's service needs
- ~~20-24.~~ 14-24. "Discharge plan" means a hospital or community treatment and discharge plan prepared ~~pursuant~~ according to Article 3 of these rules.
- ~~21-25.~~ 14-25. "Division" means the Division of Behavioral Health Services of the Department.
- ~~26.~~ 14-26. "Drug used as a restraint" means a pharmacological restraint as used in A.R.S. § 36-513 that is not standard treatment for a client's medical condition or behavioral health issue and is administered to:
- a. Manage the client's behavior in a way that reduces the safety risk to the client or others.
- b. Temporarily restrict the client's freedom of movement.
- ~~22-27.~~ 14-27. "DSMI" means the latest edition of the "Diagnostic and Statistical Manual of Mental Disorders," edited by the American Psychiatric Association.
- ~~28.~~ 14-28. "Emergency safety situation" means unanticipated client behavior that creates a substantial and imminent risk that the client may inflict injury, and has the ability to inflict injury, upon:
- a. The client, as evidenced by threats or attempts to commit suicide or to inflict injury on the client; or
- b. Another individual, as evidenced by threats or attempts to inflict injury on another individual or individuals, previous behavior that has caused injury to another individual or individuals, or behavior that places another individual or individuals in reasonable fear of sustaining injury.
- ~~23-29.~~ 14-29. "Enrolled Children" means persons under the age of 18 who receive ~~mental behavioral~~ health services by or through a regional authority.
- ~~24-30.~~ 14-30. "Exploitation" means the illegal or improper use of a client or a client's resources for another's profit or advantage.
- ~~25-31.~~ 14-31. "Frivolous," as used in this Chapter, means a grievance that is devoid of merit. Grievances are presumed not to be frivolous unless the program director has good reason to believe that the grievance:
- a. Involves conduct that is not within the scope of this Chapter,
- b. Is impossible on its face, or
- c. Is substantially similar to conduct alleged in two previous grievances within the past year that have been determined to be unsubstantiated as provided in this Chapter.
- ~~26-32.~~ 14-32. "Generic services" means services other than ~~mental behavioral~~ health services for which clients may have a need and includes, but is not limited to, health, dental, vision care, housing arrangements, social organizations, recreational facilities, jobs, and educational institutions.

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- ~~27-33.~~ “Grievance” means a complaint regarding an act, omission or condition, as provided in this Chapter.
- ~~28-34.~~ “Guardian” means an individual appointed by court order ~~pursuant~~ according to A.R.S. Title 14, Chapter 5 or Title 36, Chapter 5, or similar proceedings in another state or jurisdiction where said guardianship has been properly domesticated under Arizona law.
- ~~29-35.~~ “Hearing officer” refers to an impartial person designated by the director to hear a dispute and render a written decision.
- ~~30-36.~~ “Human rights advocate” means the human rights advocates appointed by the director under R9-21-105.
- ~~31-37.~~ “Human rights committee” means the human rights committee established under R9-21-106 by the Department.
- ~~32-38.~~ “Illegal” means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or occurrence which is or was likely to constitute a violation of a state or federal statute, regulation, court decision or other law, including the provisions of these Articles.
- ~~33-39.~~ “Individual service plan” or “ISP” means the written plan for services to a client, prepared in accordance with Article 3 of this Chapter.
- ~~34-40.~~ “Inhumane” as used in Article 4 of this Chapter means an incident, condition or occurrence that is demeaning to a client, or which is inconsistent with the proper regard for the right of the client to humane treatment.
- ~~35-41.~~ “Inpatient facility” means the Arizona State Hospital, the County Annex, or any other inpatient treatment facility licensed or funded by or through the Department to provide ~~mental behavioral~~ health services, including psychiatric health facilities, licensed psychiatric hospitals, licensed psychiatric units in general hospitals, and licensed inpatient or behavioral health facilities in jails.
- ~~36-42.~~ “Inpatient treatment and discharge plan” or “ITDP” means the written plan for services to a client prepared and implemented by an inpatient facility in accordance with Article 3 of this Chapter.
- ~~37.~~ “Likelihood of serious physical harm” means either
- ~~a. A substantial and imminent risk that serious physical harm will be inflicted by a client upon himself, as evidenced by threats or attempts to commit suicide or to inflict physical harm on himself; or~~
 - ~~b. A substantial and imminent risk that serious physical harm will be inflicted by a client upon another as evidenced by previous behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm. Substantial and imminent risk shall be interpreted to include only those instances where there is the present ability to enact serious physical harm or where there is a realistic perception of such ability.~~
- ~~38-43.~~ “Long-term view” means a planning statement that identifies, from the client’s perspective, what the client would like to be doing for work, education, and leisure and where the client would like to be living for up to a three-year period. The long-term view is based on the client’s unique interests, strengths, and personal desires. It includes predicted times for achievement.
- ~~39-44.~~ “Mechanical restraint” means ~~the use of any article, device, article, or garment attached or adjacent to a client’s body that the client cannot easily remove and that restricts a the client’s freedom of movement or normal access to the client’s body, and cannot be easily removed by the client, and is used for the purpose of confining the client’s mobility but does not include such a device, article, or garment used for orthopedic or surgical reasons or other medical device necessary to allow a client to heal from a medical condition or to participate in a treatment program. :~~
- ~~a. Used for orthopedic or surgical reasons, or~~
 - ~~b. Necessary to allow a client to heal from a medical condition or to participate in a treatment program.~~
- ~~45.~~ “Medical practitioner” means a:
- ~~a. Physician, licensed according to A.R.S. Title 32, Chapter 13 or 17;~~
 - ~~b. Physician assistant, licensed according to A.R.S. Title 32, Chapter 25; or~~
 - ~~c. Nurse practitioner, licensed according to A.R.S. Title 32, Chapter 15.~~
- ~~40-46.~~ “Meeting” means an encounter or assembly of individuals which may be conducted in person or by telephone.
- ~~41-47.~~ “Mental health agency” includes a regional authority, service provider, inpatient facility, or an agency licensed to conduct screening, evaluation and treatment under this Chapter.
- ~~42.~~ “Mental health services” ~~include community services and psychiatric hospitalization.~~
- ~~48.~~ “Nurse” means an individual licensed as a registered nurse or a practical nurse according to A.R.S. Title 32, Chapter 15.
- ~~43-49.~~ “Party” or “parties” as used in Articles 3 and 4 of these rules means the person filing a grievance under this Chapter, the agency director who issued any final resolution or decision of such a grievance, the person whose conduct is complained of in the grievance, any client or applicant who is the subject of the request or grievance, the legal guardian of client or applicant, and, in selected cases, the appropriate human rights committee.
- ~~50.~~ “Personal restraint” means the application of physical force without the use of any device, for the purpose of restricting the free movement of a client’s body, but for a behavioral health agency licensed as a level 1 RTC or a Level I sub-acute agency according to A.A.C. R9-20-102 does not include:
- ~~a. Briefly holding, without undue force, a client in order to calm or comfort the client; or~~
 - ~~b. Holding a client’s hand to escort the client from one area to another.~~
- ~~44.~~ “Pharmacological restraint” means ~~the use of a psychopharmacologic drug for discipline of the person or conve-~~

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nience of the staff and not solely required to treat medical symptoms identified by staff and recorded in the person's medical record:

- a. In response to a likelihood of serious harm, or
- b. In such a manner as to unreasonably restrict a client's movement.

45. "Physical restraint" means the use of bodily force to restrict the client's freedom of movement but does not include the firm but gentle holding of a client for less than five minutes with no more force than is necessary to protect the client or others from harm.

46.51. "PRN order" or "Pro re rata medication" means medication given as needed.

47.52. "Program director" means the person with the day-to-day responsibility for the operation of a programmatic component of a service provider, such as a specific residential, vocational, or case management program.

48.53. "Qualified clinician" means a behavioral health professional who is licensed or certified under A.R.S. Title 32, or a behavioral health technician who is supervised by a licensed or certified behavioral health professional.

49.54. "Region" means the geographical region designated by the Department in its contract with the regional authority.

50.55. "Regional authority" means the regional behavioral health authority under contract with the Department to organize and administer the delivery of mental behavioral health services or community services to clients and enrolled children within a defined geographic area.

51.56. "Restraint" means physical restraint, mechanical restraint, or pharmacological restraint drug used as a restraint.

52.57. "Seclusion" means restricting a client to a room or area through the use of locked doors or any other device or method which precludes a client from freely exiting the room or area or which a client reasonably believes precludes his unrestricted exit. In the case of an inpatient facility, confining a client to the facility, the grounds of the facility, or a ward of the facility does not constitute seclusion. In the case of a community residence, restricting a client to the residential site, pursuant according to specific provisions of an individual service plan or court order, does not constitute seclusion.

53.58. "Seriously mentally ill" means a person 18 years of age or older who is either seriously mentally ill or chronically mentally ill as those terms are defined in A.R.S. § 36-550.

54.59. "Service provider" means an agency, inpatient facility or other mental health provider funded by or through, under contract or subcontract with, licensed by, certified by, approved by, registered with, or supervised by, the Department, or receiving funds under Title XIX, to provide mental behavioral health services or community services.

55.60. "State Protection and Advocacy System" means the agency designated as the Protection and Advocacy System for individuals with mental illness, pursuant according to 42 U.S.C. 10801-51.

56.61. "Title XIX" means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.

57.62. "Treatment team" means the multidisciplinary team of persons who are responsible for providing continuous treatment and support to a client who is a current resident of an inpatient facility.

R9-21-102. Applicability

With regard to the provision of mental behavioral health services or community services to clients under A.R.S. Title 36, Chapter 5, this Chapter shall apply to the Department and to all mental health agencies funded by or through, under contract or subcontract with, licensed by, certified by, approved by, registered with, or supervised by; the Department, or receiving funds under Title XIX, to provide mental behavioral health services or community services. This Chapter shall not apply to the Arizona Department of Corrections.

R9-21-103. Principles

The purpose of this Chapter is to implement Arizona's mental health program for clients under A.R.S. Title 36, Chapter 5. These rules shall be interpreted and enforced so as to ensure that all programs for mental health services provide:

1. Human dignity;
2. Respect for the client's individuality, abilities, needs, and aspirations without regard to the client's psychiatric condition;
3. Self-determination, freedom of choice and participation in treatment to the client's fullest capacity;
4. Freedom from the discomfort, distress and deprivation which arise from an unresponsive and inhumane environment;
5. Privacy, including the opportunity wherever possible to be provided clearly defined private living, sleeping and personal care spaces;
6. Humane and adequate support and treatment that is responsive to the client's needs, that recognizes that a client's needs may vary, and that is sufficiently flexible to adjust to a client's changing needs;
7. The opportunity to receive services which are adequate, appropriate, consistent with the client's individual needs, and least restrictive of the client's freedom;
8. The opportunity to receive treatment and services which are culturally sensitive in their structure, process and content;
9. The opportunity to receive services on a voluntary basis to the maximum extent possible and entirely if possible;
10. Integration of clients into their home communities through housing and residential services which are located in residential neighborhoods, which rely as much as possible on generic support services to provide training and assistance

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~~in ordinary community experiences, and which utilize specialized mental health programs that are situated in or near generic community services;~~

- ~~11. The opportunity to live in one's own home and the flexibility of a service system which responds to individual needs by increasing, decreasing and changing services as needs change;~~
- ~~12. The opportunity to undergo normal experiences, even though such experiences may entail an element of risk; provided, however, that a client's safety or well-being or that of others shall not be unreasonably jeopardized;~~
- ~~13. The opportunity to engage in activities and styles of living, consistent with the client's interests, which encourage and maintain the integration of the client into the community.~~

~~R9-21-104.~~ R9-21-103. Computation of Time

~~In computing any period of time prescribed or allowed by this Chapter, the day of the act, event or default from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When that period of time is 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.~~

~~For any period of time prescribed or allowed by this Chapter, the time shall be calculated as follows:~~

- ~~1. The period of time shall not include the day of the act, event or default from which the designated period of time begins to run;~~
- ~~2. If the period of time is designated as calendar days, the period of time shall include each day after the day of the act, event or default from which the designated period of time begins to run;~~
- ~~3. If the period of time is not designated as calendar days:~~
 - ~~a. If the period of time prescribed or allowed is less than 11 days, the period of time shall not include intermediate Saturdays, Sundays and legal holidays;~~
 - ~~b. If the period of time is 11 days or more, the period of time shall include intermediate Saturdays, Sundays and legal holidays;~~
 - ~~c. If the last day of the period of time is not a Saturday, Sunday, or legal holiday, the period of time shall include the last day of the period of time; and~~
 - ~~d. If the last day of the period of time is a Saturday, Sunday, or legal holiday, the period of time shall extend until the end of the next day that is not a Saturday, Sunday or legal holiday.~~

~~R9-21-105.~~ R9-21-104. Office of Human Rights; Human Rights Advocates

- ~~A. The director shall establish an Office of Human Rights for clients within the Department. The office shall have its own chief officer appointed by the director. The chief officer shall report directly to the director and shall be responsible for the management and control of the office, as well as the hiring, training, supervision, and coordination of all Department human rights advocates.~~
- ~~B. The chief officer shall appoint at least one human rights advocate for each 2,500 clients in each region. Each region shall have at least one human rights advocate. The chief officer shall appoint at least one human rights advocate for ASH. All clients shall have the right of access to a human rights advocate in order to understand, exercise, and protect their rights. The human rights advocate shall advocate on behalf of clients and shall assist clients in understanding and protecting their rights and obtaining needed services. The human rights advocate shall also assist clients in resolving appeals and grievances under Articles 3 and 4 of this Chapter and shall coordinate and assist the human rights committees in performing their duties.~~
- ~~C. The human rights advocates shall be given access to all:~~
 - ~~1. ~~All clients~~ Clients; and~~
 - ~~2. Client records from a service provider, regional authority, or the Department, except as prohibited by federal or state law A.R.S. §§ 36-445 et seq., ~~provided the advocate obtains written consent from the client and signs a written statement agreeing to adhere to all applicable laws regarding the confidentiality of such records.~~~~
- ~~D. Staff of inpatient facilities, regional authorities, and service providers shall cooperate with the advocate by providing relevant information, reports, investigations, and access to meetings, staff persons, and facilities except as prohibited by A.R.S. §§ 36-445 et seq., 36-107, 36-504, 36-507, 36-509, and 36-517.01, federal or state law and the client's right to privacy.~~
- ~~E. An agency director shall notify the Office of Human Rights and the applicable human rights committee of each client who needs special assistance.~~
- ~~E. The Office of Human Rights shall:~~
 - ~~1. Maintain a list that contains the names of each client who needs special assistance and, if applicable, the name and address of the residential program providing behavioral services to the client; and~~
 - ~~2. Provide each human rights committee with a list of all clients who need special assistance who reside in the respective jurisdiction of the human rights committee.~~

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~~E-G.~~ The Office of Human Rights shall promptly distribute to all appropriate human rights committees copies of all reports received ~~pursuant~~ according to this Chapter (e.g., reports regarding clients who need special assistance, allegations of mistreatment, denial of rights, restraint, and seclusion).

~~R9-21-106.~~ **R9-21-105. Human Rights Committees**

- A. ~~Pursuant~~ According to A.R.S. §§ 41-3803 and 41-3804, the Department shall establish human rights committees to provide independent oversight to ensure that the rights of clients and enrolled children are protected. The Department shall establish at least one human rights committee for each region and the Arizona State Hospital. Upon the establishment of a human rights committee, if more than 2500 clients reside within a region, the Department shall establish additional human rights committees until there is one human rights committee for each 2500 clients in a region.
- B. Each human rights committee shall be composed of at least seven and not more than 15 members. At least two members of the committee shall be clients or former clients, at least two members shall be relatives of clients, two members shall be parents of enrolled children and at least three members shall have expertise in one of the following areas: psychology, law, medicine, education, special education, social work or ~~mental~~ behavioral health services.
- C. The director shall appoint the initial members to each regional committee and the human rights committee for the Arizona State Hospital. The Director shall appoint members to fill vacancies on a human rights committee, subject to the approval of the committee.
- D. Each committee shall meet at least four times each year. Within three months of its formation, each committee shall establish written guidelines governing the committee's operations. These guidelines shall be consistent with A.R.S. §§ 41-3803 and 41-3804. The adoption and amendment of the committee's guidelines shall be by a majority vote of the committee and shall be submitted to the Director for approval.
- E. No employee of or individual under contract with the Department, regional authority or service provider may be a voting member of a committee.
- F. If a member of a human rights committee or the human rights committee determines that a member has a conflict of interest regarding an agenda item, the member shall refrain from:
1. Participating in a discussion regarding the agenda item, and
 2. Voting on the agenda item.

~~F-G.~~ Each committee shall, within its respective jurisdiction, provide independent oversight and review of:

1. Allegations of illegal, dangerous or inhumane treatment of clients and enrolled children;
2. Reports filed with the committee under R9-21-203 and R9-21-204 concerning the use of seclusion, restraint, abuse, neglect, exploitation, mistreatment, accidents and injuries;
3. The provision of services to clients identified under R9-21-301 in need of special assistance
4. Violations of rights of clients and enrolled children and conditions requiring investigation under Article 4 of this Chapter;
5. Research in the field of mental health ~~pursuant~~ according to A.R.S. § 41-3804(E)(2); and
6. Any other issue affecting the human rights of clients and enrolled children.

~~G.~~ The agency director shall provide notice to the human rights advocates provided by the Department whenever a client is determined to need special assistance pursuant to R9-21-301.

- ~~1. The appropriate human rights advocate shall maintain a current list of all such clients.~~
- ~~2. The human rights committee shall make special efforts to monitor the program's compliance with Department rules for all such clients. Such efforts shall include regular visits to the residential environment where such clients live, meetings with clients to determine their satisfaction with the program, and inspection of relevant records or other documents, except as prohibited by A.R.S. §§ 36-445 et seq., 36-107, 36-504, 36-507, 36-509, and 36-517.01, and the client's right to privacy. Committee members may inspect client records pursuant to A.R.S. §§ 36-509(A)(35) and 41-3804(I).~~

~~H.~~ Within its jurisdiction, each human rights committee shall, for a client who needs special assistance, and may, for other clients and enrolled children:

1. Make regular site visits to residential environments;
2. Meet with the client, including a client who needs special assistance, in residential environments to determine satisfaction of the clients with the residential environments; and
3. Inspect client records, including client records for clients who need special assistance, except as prohibited by federal or state law and a client's right to privacy.

~~H-I.~~ A committee may request the services of a consultant or staff person to advise the committee on specific issues. The cost of the consultant or staff person shall be assumed by the Department or regional authority subject to the availability of funds specifically allocated for that purpose. A consultant or staff person may, in the sole discretion of the committee, be a member of another committee or an employee of the Department, regional authority, or service provider. No committee consultant or staff person shall vote or otherwise direct the committee's decisions.

~~I-J.~~ Committee members and committee consultants and staff persons shall have access to client records ~~pursuant~~ according to A.R.S. §§ 36-509(A)(35) and 41-3804(I). If a human rights committee's request for information or records is denied, the committee may request a review of the decision to deny the request ~~pursuant~~ according to A.R.S. § 41-3804(J). Nothing in

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this rule shall be construed to require the disclosure of records or information to the extent that such information is protected by A.R.S. § 36-445 et seq.

~~J.K.~~ On the first day of the months of January, April, July, and October of each year, each committee shall issue a quarterly report summarizing its activities for the prior quarter, including any written objections to the Director ~~pursuant~~ according to A.R.S. § 41-3804(F), and make any recommendations for changes it believes the Department or regional authorities should implement. In addition, the committee may, as it deems appropriate, issue reports on specific problems or violations of client's rights. The report of a regional committee shall be delivered to the regional authority and the Division.

~~K.L.~~ The Department shall provide training and support to human rights committees.

~~L.M.~~ A human rights committee may request:

1. An investigation for a client ~~pursuant~~ according to Article 4 of this Chapter, or
2. A regional authority or the Arizona State Hospital, as applicable, to conduct an investigation for an enrolled child.

~~M.N.~~ The regional authority or the Arizona State Hospital, as applicable, when requested by a human rights committee, shall conduct an investigation concerning:

1. A client as provided in Article 4 of this Chapter, and
2. An enrolled child.

~~N.O.~~ A human rights committee shall submit an annual report of the human rights committee's activities and recommendations to the Director at the end of each calendar year ~~pursuant~~ according to A.R.S. § 41-3804(G).

~~R9-21-107. R9-21-106. State Protection and Advocacy System~~

Staff of mental health agencies shall cooperate with the State Protection and Advocacy System in its investigations and advocacy for clients and shall provide the System access to clients, records and facilities to the extent permitted and required by federal law, 42 U.S.C.A. 10801-51. Nothing in this rule shall be construed to create an independent cause of action that does not already exist for the State Protection and Advocacy System either in state court or any administrative proceeding provided by these rules.

~~R9-21-107. Renumbered~~

ARTICLE 2. RIGHTS OF PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-201. Civil and Other Legal Rights

A. Clients shall have all rights accorded by applicable law, including but not limited to those prescribed in A.R.S. §§ 36-504 through 36-514 and in A.A.C. Title 9, Chapter ~~10~~ 20, ~~Articles 10 and 50~~. Any individual or agency providing ~~mental behavioral~~ health services or community services as defined in R9-21-101 shall not abridge these rights, including the following:

1. Those civil rights set forth in A.R.S. § 36-506;
2. The right to acquire and dispose of property, to execute instruments, to enter into contractual relationships, to hold professional or occupational or vehicle operator's licenses, unless the Client has been adjudicated incompetent or there has been a judicial order or finding that such client is unable to exercise the specific right or category of rights. In the case of a client adjudicated incompetent, these rights may be exercised by the client's guardian, in accordance with applicable law;
3. The right to be free from unlawful discrimination by the Department or by any mental health agency on the basis of race, creed, religion, sex, sexual preference, age, physical or mental handicap or degree of handicap; provided, however, classifications based on age, sex, category or degree of handicap shall not be considered discriminatory, if based on written criteria of client selection developed by a mental health agency and approved by the Department as necessary to the safe operation of the mental health agency and in the best interests of the clients involved;
4. The right to equal access to all existing behavioral health services, community services, and generic services provided by or through the state of Arizona;
5. The right to religious freedom and practice, without compulsion and according to the preference of the client;
6. The right to vote, unless under guardianship, including reasonable assistance when desired in registering and voting in a nonpartisan and noncoercive manner;
7. The right to communicate including:
 - a. The right to have reasonable access to a telephone and reasonable opportunities to make and receive confidential calls and to have assistance when desired and necessary to implement this right;
 - b. The unrestricted right to send and receive uncensored and unopened mail, to be provided with stationery and postage in reasonable amounts, and to assistance when desired and necessary to implement this right;
8. The right to be visited and visit with others, provided that reasonable restrictions may be placed on the time and place of the visit but only to protect the privacy of other clients or to avoid serious disruptions in the normal functioning of the mental health agency;
9. The right to associate with anyone of the client's choosing, to form associations, and to discuss as a group, with those responsible for the program, matters of general interest to the client, provided that these do not result in serious disruptions in the normal functioning of the mental health agency. Clients shall receive cooperation from the mental

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health agency if they desire to publicize and hold meetings and clients shall be entitled to invite visitors to attend and participate in such meetings, provided that they do not result in serious disruptions in the normal functioning of the mental health agency;

10. The right to privacy, including the right not to be fingerprinted and photographed without ~~consent~~ authorization, except as provided by A.R.S. § 36-507(2);
11. The right to be informed, in appropriate language and terms, of client rights;
12. The right to assert grievances with respect to infringement of these rights, including the right to have such grievances considered in a fair, timely, and impartial procedure, as set forth in Article 4 of these rules, and the right not to be retaliated against for filing a grievance.;
13. The right of access to a human rights advocate in order to understand, exercise, and protect a client's rights;
14. The right to be assisted by an attorney or designated representative of the client's own choice, including the right to meet in a private area at the program or facility with an attorney or designated representative. Nothing in this Section shall be construed to require the Department or any mental health agency to pay for the services of an attorney who consults with or represents a client;
15. The right to exercise all other rights, entitlements, privileges, immunities provided by law, and specifically those rights of consumers of ~~mental~~ behavioral health services or community services set forth in A.R.S. §§ 36-504 through 36-514;
16. The same civil rights as all other citizens of Arizona, including the right to marry and to obtain a divorce, to have a family, and to live in the community of their choice without constraints upon their independence, except those constraints to which all citizens are subject.

B. Nothing in this Article shall be interpreted to:

1. Give the power, right, or authority to any person or mental health agency to authorize sterilization, abortion, or psychosurgery with respect to any client, except as may otherwise be provided by law; or
2. Restrict the right of physicians, nurses, and emergency medical technicians to render emergency care or treatment in accordance with A.R.S. § 36-512; or
3. Construe this rule to confer constitutional or statutory rights not already present.

R9-21-202. Right to Support and Treatment

A. ~~Clients shall have~~ A client has the following rights with respect to ~~their~~ the client's support and treatment:

1. The right to ~~mental behavioral~~ health services or community services: ~~under conditions that support the client's personal liberty and restrict such liberty only as provided by law or in these rules;~~
 - a. Under conditions that support the client's personal liberty and restrict such personal liberty only as provided by law or in these rules this Chapter;
 - b. From a flexible service system that responds to the client's needs by increasing, decreasing and changing services as needs change;
 - c. Provided in a way that:
 - i. Preserves the client's human dignity;
 - ii. Respects the client's individuality, abilities, needs, and aspirations without regard to the client's psychiatric condition;
 - iii. Encourages the client's self-determination, freedom of choice, and participation in treatment to the client's fullest capacity;
 - iv. Ensures the client's freedom from the discomfort, distress and deprivation that arise from an unresponsive and inhumane environment;
 - v. Protects and promotes the client's privacy, including an opportunity whenever possible to be provided clearly defined private living, sleeping and personal care spaces; and
 - vi. Maximizes integration of the client into the client's community through housing and residential services which are located in residential neighborhoods, rely as much as possible on generic support services to provide training and assistance in ordinary community experiences, and utilize specialized mental health programs that are situated in or near generic community services;
 - vii. Offers the client humane and adequate support and treatment that is responsive to the client's needs, recognizes that the client's needs may vary, and is capable of adjusting to the client's changing needs; and
 - d. That provide the client with an opportunity to:
 - i. Receive services that are adequate, appropriate, consistent with the client's individual needs, and least restrictive of the client's freedom;
 - ii. Receive treatment and services that are culturally sensitive in structure, process and content;
 - iii. Receive services on a voluntary basis to the maximum extent possible and entirely if possible;
 - iv. Live in the client's own home;
 - v. Undergo normal experiences, even though the experiences may entail an element of risk, unless the client's safety or well-being or that of others is unreasonably jeopardized; and

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- vi. Engage in activities and styles of living, consistent with the client's interests, which encourage and maintain the integration of the client into the community.
- 2. The right to ongoing participation in the planning of services as well as participation in the development and periodic revision of the individual service plan;
- 3. The right to be provided with a reasonable explanation of all aspects of one's condition and treatment;
- 4. The right to give informed consent to all ~~mental behavioral~~ health services and the right to refuse ~~mental behavioral~~ health services in accordance with A.R.S. §§ 36-512 and 36-513, except as provided for in A.R.S. §§ 36-520 through 36-544 and 13-3994;
- 5. The right not to participate in experimental treatment without ~~informed~~, voluntary, written informed consent; the right to appropriate protection associated with such participation; and the right and opportunity to revoke such consent;
- 6. The right to a humane treatment environment that affords protection from harm, appropriate privacy, and freedom from verbal or physical abuse;
- 7. The right to enjoy basic goods and services without threat of denial or delay. For residential service providers, these basic goods and services include at least the following:
 - a. A nutritionally sound diet of wholesome and tasteful food available at appropriate times and in as normal a manner as possible;
 - b. Arrangements for or provision of an adequate allowance of neat, clean, appropriate, and seasonable clothing that is individually chosen and owned;
 - c. Assistance in securing prompt and adequate medical care, including family planning services, through community medical facilities;
 - d. Opportunities for social contact in the client's home, work or schooling environments;
 - e. Opportunities for daily activities, recreation and physical exercise;
 - f. The opportunity to keep and use personal possessions; and
 - g. Access to individual storage space for personal possessions;
- 8. The right to be informed, in advance, of charges for services;
- 9. The right to a continuum of care in a unified and cohesive system of community services that is well integrated, facilitates the movement of clients among programs, and ensures continuity of care;
- 10. The right to a continuum of care that consists of, but is not limited to, clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, vocational training and opportunities, day treatment, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance;
- 11. The right to a continuum of care with programs that offer different levels of intensity of services in order to meet the individual needs of each client;
- 12. The right to appropriate mental health treatment, based on each client's individual and unique needs, and to those community services from which the client would reasonably benefit;
- 13. The right to community services provided in the most normal and least restrictive setting, according to the least restrictive means appropriate to the client's needs;
- 14. The right to clinical case management services and a case manager. The clinical team negotiates and oversees the provision of services and ensures the client's smooth transition with service providers and among agencies;
- 15. The right to participate in treatment decisions and in the development and implementation of the client's ISP, and the right to participate in choosing the type and location of services, consistent with the ISP;
- 16. The right to prompt consideration of discharge from an inpatient facility and the identification of the steps necessary to secure a client's discharge as part of an ISP;
- 17. The rights prescribed in Articles 3 and 4 of this Chapter, including the right to:
 - a. A written individual service plan;
 - b. Assert grievances; and
 - c. Be represented by a qualified advocate or other designated representative in the development of the ISP and the inpatient and discharge plan and in the grievance process, in order to understand, exercise and protect the client's rights.

B. Subsection (A) shall not be construed to confer constitutional or statutory rights not already present.

R9-21-203. Protection from Abuse, Neglect, Exploitation and Mistreatment

- A. No mental health agency shall mistreat a client or permit the mistreatment of a client by staff subject to its direction. Mistreatment includes any intentional, reckless or negligent action or omission which exposes a client to a serious risk of physical or emotional harm. Mistreatment includes but is not limited to:
- 1. Abuse, neglect or exploitation;
 - 2. Corporal punishment;
 - 3. Any other unreasonable use or degree of force or threat of force not necessary to protect the client or another person from bodily harm;
 - 4. Infliction of mental or verbal abuse, such as screaming, ridicule, or name calling;

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5. Incitement or encouragement of clients or others to mistreat a client;
 6. Transfer or the threat of transfer of a client for punitive reasons;
 7. ~~The use of any restraint or seclusion as a punishment or primarily for the convenience of staff~~ Restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation;
 8. Any act in retaliation against a client for reporting any violation of the provisions of this Chapter to the Department; or
 9. Commercial exploitation.
- B. The following special sanctions shall be available to the Department, in addition to those set forth in A.A.C. Title 9, Chapter 10, Article 10 of its rules, to protect the interests of the client involved as well as other current and former clients of the mental health agency.
1. Mistreatment of a client by staff or persons subject to the direction of a mental health agency may be grounds for suspension or revocation of the license of the mental health agency or the provision of Departmental financial assistance, and, with respect to employees of the Department, grounds for disciplinary action, which may include dismissal.
 2. Failure of an employee of the Department to report to the Department any instance of mistreatment within any mental health agency subject to this Chapter shall be grounds for disciplinary action, which may include dismissal.
 3. Failure of an agency director to report client deaths and allegations of sexual and physical abuse to the Department and to comply with the procedures described in Article 4 of this Chapter for the processing and investigation of grievances and reports shall be grounds for suspension of the license of the mental health agency or the provision of Departmental financial assistance, and, with respect to a service provider directly operated by the Department, grounds for disciplinary action, which may include dismissal.
 4. The agency director shall report all allegations of mistreatment and denial of rights to the Office of Human Rights and the regional authority for review and monitoring in accordance with R9-21-105.
- C. An agency director shall report all incidents of abuse, neglect, or exploitation to the appropriate authorities as required by A.R.S. § 46-454 and shall document all such reports in the mental health agency's records.
- D. Where an agency director has reasonable cause to believe that a felony relevant to the functioning of the program has been committed by staff persons subject to the agency's direction, a report shall be filed with the county attorney.
- E. The identity of persons making reports of abuse, neglect, exploitation or mistreatment shall not be disclosed by the agency director or by the Department, except as necessary to investigate the subject matter of the report.

R9-21-204. Restraint and Seclusion

- ~~A.~~ A mental health agency shall only use restraint or seclusion to the extent permitted by and in compliance with this Chapter, 9 A.A.C. 20, and other applicable federal or state law.
- ~~A.B.~~ A mental health agency shall only use Restraint restraint or seclusion shall only be used where a client poses a likelihood of serious physical harm as defined in R9-21-101.:
1. To ensure the safety of the client or another individual in an emergency safety situation;
 2. After other available less restrictive methods to control the client's behavior have been tried and were unsuccessful;
 3. Until the emergency safety situation ceases and the client's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired; and
 4. In a manner that:
 - a. Prevents physical injury to the client,
 - b. Minimizes the client's physical discomfort and mental distress, and
 - c. Complies with the mental health agency's policies and procedures required in subsection (E) and with this Section.
- ~~B.C.~~ A mental health agency shall not use Restraint restraint or seclusion shall not be used for the convenience of staff, as a method of punishment, in lieu of adequate staffing, or as a substitute for appropriate treatment as a means of coercion, discipline, convenience, or retaliation.
- ~~C.D.~~ Staff qualifications and staffing ratio requirements shall be adequate to safely provide restraint or seclusion as required by this rule without jeopardizing staffing of the primary program.
- A service provider shall at all times have staff qualified according to 9 A.A.C. 20 on duty to provide:
1. Restraint and seclusion according to this Section, and
 2. The behavioral health services the service provider is authorized to provide according to 9 A.A.C. 20.
- ~~D.E.~~ Each A mental health agency shall develop and implement written policies and procedures training programs for the use and prevention of seclusion and restraint and seclusion that are consistent with this Section and other applicable federal or state law and include: by employees of the provider and alternatives thereto. The policies and training shall also include procedures for the immediate release of clients in seclusion or restraint during emergencies. The policies and training program shall be consistent with this rule and shall be filed with and approved by the Division. The mental health agency shall provide training on this rule, the agency's policies, and the appropriate techniques for placing a client in all types of seclusion and restraint used at the agency.
1. Methods of controlling behavior that may prevent the need for restraint or seclusion.
 2. Appropriate techniques for placing a client in each type of restraint or seclusion; used at the mental health agency.

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- and
3. Immediate release of a client during an emergency.
- E.** A mental health agency shall develop and implement a training program on the policies and procedures in subsection (E).
- E.** No form of restraint or seclusion shall be used with a client except:
1. When in full compliance with the policies of the mental health agency governing the use of restraint and seclusion;
 2. After all less restrictive and reasonably available methods of control have been attempted and were unsuccessful; and
 3. In such a manner as to afford the client the greatest possible comfort and to avoid physical injury and minimize mental distress to the greatest extent possible.
- F.** Seclusion and restraint shall not be used by any community service provider and shall only be used by an inpatient facility or by a mental health agency but only to the extent that such seclusion or restraint is expressly permitted by and in compliance with these rules and other applicable licensing rules and statutes for that inpatient facility or provider of crisis services.
- G.** Seclusion or restraint shall only be used when authorized by a written order from a licensed physician who has personally examined the client before authorizing the restraint or seclusion. The physician's written order shall document the date and time of the order, the date and time of personal examination, and the type of restraint authorized.
1. If a physician is not available at the time of the emergency, a licensed registered nurse may initiate the mechanical restraint or seclusion provided that:
 - a. Immediately thereafter, and
 - i. No later than 15 minutes thereafter, the nurse initiates a call to obtain a telephone order from a licensed physician; and
 - ii. No later than 30 minutes thereafter, the nurse obtains a telephone order from a licensed physician.
 - b. The physician, in consultation with the nurse, shall determine whether it is clinically necessary for the physician to personally examine the client at that time. The determination shall be based upon the client's current and past medical, physical and psychiatric condition. The determination and the reasons therefor shall be documented in the client's record.
 2. If a physician is not available at the time of the emergency, a licensed registered nurse may initiate pharmacological restraint by obtaining a telephone order from a physician:
 - a. The physician, in consultation with the nurse, shall determine whether it is clinically necessary for the physician to personally examine the client at that time. The determination shall be based upon the client's current and past medical, physical and psychiatric condition. The determination and the reasons therefor shall be documented in the client's record.
 - b. An order for pharmacological restraint shall be limited to the dosage necessary to achieve its effect. An order for pharmacological restraint shall not include the administration of time-released drugs which are designed to be effective for more than an eight-hour period.
 - c. Any subsequent orders for pharmacological restraint shall be issued in accordance with paragraph (G)(2)(a) and (b) above, except that only one subsequent order may be made without personal examination of the client by the physician.
- G.** A mental health agency shall only use restraint or seclusion according to:
1. A written order given:
 - a. By a physician providing treatment to a client; or
 - b. If a physician providing treatment to a client is not present on the premises or on-call, by a medical practitioner;or
 2. An oral order given to a nurse by:
 - a. A physician providing treatment to a client, or
 - b. If a physician providing treatment to a client is not present on the premises or on-call, a medical practitioner.
- H.** If a restraint or seclusion is used according to subsection (G)(2), a medical practitioner shall, at the time of the oral order in consultation with the nurse, determine whether, based upon the client's current and past medical, physical and psychiatric condition, it is clinically necessary for a medical practitioner to examine the client as soon as possible and, if applicable, a medical practitioner shall examine the client as soon as possible.
- I.** A medical practitioner who gives an order for restraint or seclusion shall:
1. Order the least restrictive restraint or seclusion that may resolve the client's behavior that is creating the emergency safety situation, based upon consultation with a staff member at the agency;
 2. Be available to the agency for consultation, at least by telephone, throughout the period of the restraint or seclusion;
 3. Include the following information on the order:
 - a. The name of the medical practitioner ordering the restraint or seclusion.
 - b. The date and time that the restraint or seclusion was ordered.
 - c. The restraint or seclusion ordered.
 - d. The criteria for release from restraint or seclusion without an additional order, and
 - e. The maximum duration for the restraint or seclusion.

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4. If the order is for mechanical restraint or seclusion, limit the order to a period of time not to exceed three hours.
5. If the order is for a drug used as a restraint, limit the:
 - a. The dosage to that necessary to achieve the desired effect, and
 - b. Drug ordered to a drug other than a time-released drug designed to be effective for more than eight hours; and
6. If the medical practitioner ordering the use of restraint or seclusion is not a physician providing treatment to the client:
 - a. After ordering the restraint or seclusion, consult with the physician providing treatment as soon as possible, and
 - b. Inform the physician providing treatment of the client's behavior that created the emergency safety situation and required the client to be restrained or placed in seclusion.

H.J. PRN orders shall not be used for any form of restraint or seclusion.

K. If a medical practitioner has not examined the client according to subsection (H), the following individual shall conduct a face-to-face assessment of a client's physical and psychological well-being within one hour after the initiation of restraint or seclusion:

1. For a behavioral health agency licensed according to R9-20-102 as a Level 1 psychiatric acute hospital, a medical practitioner, who is either onsite or on-call at the time the mental health agency initiates the restraint or seclusion; or
2. For a behavioral health agency licensed according to R9-20-102 as a Level 1 RTC, a Level 1 sub-acute agency, or a Level 1 specialized transitional agency, a medical practitioner or a registered nurse with at least one year of full time behavioral health work experience, who is either onsite or on-call at the time the mental health agency initiates the restraint or seclusion.

L. A face-to-face assessment of a client according to subsection (K) shall include a determination of:

1. The client's physical and psychological status,
2. The client's behavior,
3. The appropriateness of the restraint or seclusion used,
4. Whether the emergency safety situation has passed, and
5. Any complication resulting from the restraint or seclusion used.

I.M. The use of any form of restraint or seclusion shall be recorded in the client's record with the following information For each restraint or seclusion of a client, a mental health agency shall include in the client's record the order and any renewal order for the restraint or seclusion, and shall document in the client's record:

1. The nature of the restraint or seclusion used;
2. The reason for the restraint or seclusion, including the facts and behaviors justifying it;
3. The types of less restrictive alternatives ~~which~~ that were attempted and the reasons for ~~their~~ the failure of the less restrictive alternatives;
4. The ~~names~~ name of the persons each medical practitioner authorizing the use of restraint or seclusion and employing each individual ~~the restraint or seclusion~~ restraining or secluding a client or monitoring a client who is in restraint or seclusion;
5. The ~~physician's~~ medical practitioner's evaluation and assessment of the need for seclusion or restraint ~~and the date and times thereof;~~
6. The ~~physician's~~ medical practitioner's determination and the reasons ~~therefor~~ for the determination as to whether personal examination of a client by a medical practitioner is necessary ~~pursuant~~ according to subsection ~~(G)~~ (H) above;
7. The specific and measurable criteria for client release from mechanical restraint or seclusion with documentation to support that the client was notified of the release criteria and the client's response;
8. The date and ~~time of day~~ the restraint or seclusion was authorized and administered times the restraint or seclusion actually began and ended;
9. The time and results of the face-to-face assessment required in subsection (L);
- 9,10. The date and times all periodic checks were made and by whom For the monitoring of a client in restraint or seclusion required by subsection (P); ; and
 - a. The time of the monitoring,
 - b. The name of the staff member who conducted the monitoring, and
 - c. The observations made by the staff member during the monitoring; and
10. The duration of the restraint or seclusion.
11. The outcome of the restraint or seclusion.

J.N. If, at any time during the ordered period of a seclusion or mechanical restraint, a ~~licensed physician~~ medical practitioner or ~~licensed~~ registered nurse determines that the emergency which justified the seclusion or restraint has subsided, or if the required documentation reflects that the criteria for release have been met, the client shall be released and the order terminated. ~~At the end of the ordered period of seclusion or restraint, the~~ The client shall be released no later than the end of the period of time ordered for the restraint or seclusion, unless a new order is written by a physician medical practitioner in accordance with renews an order for restraint or seclusion according to subsections subsection (Q), (G) and (M), which documents that the emergency condition continues.

K.O. For any client in mechanical restraint, the ~~physician~~ medical practitioner shall determine whether one-to-one supervision

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is clinically ~~appropriate~~ necessary and shall document the determination and the reasons ~~therefor~~ for the determination in the client's record.

~~**L.P.** Any client under restraint or seclusion shall be monitored as follows~~ A mental health agency shall monitor a client in restraint or seclusion as follows:

1. The client shall be personally examined at least every 15 minutes for the purpose of ensuring the client's general comfort and safety and determining the client's need for food, fluid, bathing, and access to the toilet. Personal examinations shall be conducted by staff members with documented training in the appropriate use of restraint and seclusion and who are working under the supervision of a ~~licensed physician~~ medical practitioner or a ~~licensed~~ registered nurse.
2. A ~~licensed~~ registered nurse shall personally examine the client every hour to assess the status of the client's mental and physical condition and to ensure the client's continued well-being.
3. If the client has any medical condition that may be adversely affected by the restraint or seclusion, the client shall be monitored every five minutes, until the medical condition resolves, if applicable.
4. If other clients have access to a client being restrained or secluded; or, if a medical practitioner determines that one-to-one supervision is clinically necessary according to subsection (O), a staff member shall continuously supervise the client on a one-to-one basis ~~the client being restrained or secluded shall be continuously supervised by a staff member on a one-to-one basis.~~
5. ~~At least every two hours, the client shall be released from mechanical restraint or seclusion for at least ten minutes, unless a licensed physician or licensed registered nurse determines that such release is clearly contraindicated and documents the determination in the client's record~~ If a mental health agency maintains a client in a mechanical restraint, a staff member shall loosen the mechanical restraints every 15 minutes.
6. Nutritious meals shall not be withheld from a client who is restrained or secluded, if mealtimes fall during the period of restraint. Staff shall supervise all meals provided to the client while in restraint or seclusion.
7. ~~The results of the monitoring under this subsection shall be recorded in the client's record~~ At least once every two hours, a client who is restrained or secluded shall be given the opportunity to use a toilet.

~~**M.O.** An order for mechanical restraint or seclusion shall be effective for a maximum of three hours. If, at any time during the three hour period, a licensed registered nurse determines that the emergency which justified the restraint has subsided, the client shall be released and the order terminated. At the end of the three hour period, the client must be released unless a renewal or new order for mechanical restraint or seclusion is written by a licensed physician. All renewal or new orders for mechanical restraint or seclusion shall be issued in accordance with subsection (G) above, except that only one renewal or new order may be made without personal examination of the client by the physician.~~

A medical practitioner may renew an order for restraint or seclusion more than once as follows:

1. For the first renewal order, the order shall meet the requirements of subsection (G)(1) or (G)(2); and
2. For a renewal order subsequent to the first renewal order:
 - a. The medical practitioner shall personally examine the client before giving the renewal order, and
 - b. The order shall not permit the continuation of the restraint or seclusion for more than 12 consecutive hours unless the requirements of subsection (P) are met.

~~**N.R.** No order for mechanical restraint or seclusion shall be renewed~~ continue for more than 12 consecutive hours without the review and approval by the medical director or designee of the mental health agency in consultation with the client and relevant staff to discuss and evaluate the needs of the client. The review and approval, if any, and the reasons justifying any continued restraint or seclusion shall be documented in the client's record.

~~**O.S.**~~ If a client requires the repeated or continuous use of restraint or seclusion during a 24-hour period, a review process shall be initiated immediately and shall include the client and all relevant staff persons and clinical consultants who are available to evaluate the need for an alternative treatment setting and the needs of the client. The review and its findings and recommendations shall be documented in the client's record.

~~**P.T.**~~ Whenever a client is subjected to extended or repeated orders for restraint or seclusion during a 30-day period, the medical director shall require a special meeting of the client's clinical team pursuant according to R9-21-314 to determine whether other treatment interventions would be useful and whether modifications of the ISP or IDTP are required.

~~**Q.U.**~~ As part of a mental health agency's quality assurance program, an audit will be conducted and a report filed with the agency's medical director within 24 hours, or the first working day, for every episode of the use of restraint or seclusion to ensure that the agency's use of seclusion or restraint is in full compliance with the rules set forth in this Article.

~~**R.V.**~~ Not later than the tenth day of every month, the program director shall prepare and file with the Division and the Office of Human Rights a written report describing the use of any form of restraint or seclusion during the preceding month in the mental health agency or by any employees of the agency. In the case of an inpatient facility, the report shall also be filed with any patient or human rights committee for that facility.

~~**S.W.**~~ The Department's human rights committee, the Office of Human Rights, and any applicable regional human rights committee shall review such reports to determine if there has been any inappropriate or unlawful use of restraint or seclusion and to determine if restraint or seclusion may be used in a more effective or appropriate fashion.

~~**T.X.**~~ If any human rights committee or the Office of Human Rights determines that restraint or seclusion has been used in violation of any applicable law or rule, the committee or Office may take whatever action is appropriate, including investigat-

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ing the matter itself or referring the matter to the Division for remedial action.

R9-21-205. Labor

- A. No client shall be required to perform labor which involves the essential operation and maintenance of the service provider or the regular care, treatment or supervision of other clients, provided however, that:
1. Only a residential service provider may require clients to perform activities related to maintaining their bedrooms, other personal areas, and their clothing and personal possessions in a neat and clean manner.
 2. Clients may perform labor in accordance with a planned and supervised program of vocational and rehabilitation training as set forth in an ISP or IDTP developed pursuant according to Article 3 of this Chapter.
- B. Any client may voluntarily perform any labor available.
- C. The requirements of federal and state laws relating to wages, hours of work, workers' compensation and other labor standards shall be met with respect to all labor.

R9-21-206. Competency and Consent

- ~~A. No clients shall be deemed to be incompetent to manage their affairs, to contract, to hold professional, occupational or vehicle operator's licenses, to make wills, to vote or to exercise any other civil or legal right solely by reason of admission to a mental health agency.~~
- ~~B. All clients~~ An applicant or client shall be is presumed to be legally competent to conduct ~~their~~ the client's personal and financial affairs, unless otherwise determined by a court in a guardianship or conservatorship proceeding.
- ~~C. B. Only an applicant or client who is competent may provide informed consent, authorization, or permission as required in this Chapter. In any eligibility determination, assessment or periodic review of a client's ability to make informed decisions, rendered pursuant to Article 3 of these rules, A mental health agency shall use the following criteria to determine if an applicant or client is competent and the appropriateness of establishing or removing a guardianship, temporary guardianship, conservatorship, or guardianship ad litem for the client shall be determined as follows:~~
1. ~~A~~ An applicant or client shall be determined to be in need of guardianship or conservatorship only if the applicant's or client's ability to make important decisions concerning the applicant or client or the applicant's or client's property is so limited that the absence of a person with legal authority to make such decisions for the applicant or client creates a serious risk to the applicant's or client's health, welfare or safety.
 2. Although the capability of the applicant or client to make important decisions is the central factor in determining the need for guardianship, the capabilities of the applicant's or client's family, the applicant's or client's living circumstances, the probability that available treatment will improve the applicant's or client's ability to make decisions on ~~one's own~~ the applicant's or client's behalf, and the availability and utility of nonjudicial alternatives to guardianships such as trusts, representative payees, citizen advocacy programs, or community support services should also be considered.
 3. ~~The assessment or periodic review should identify the specific area(s) of the client's functioning which forms the basis of the recommendation for the appointment or removal of a guardian or conservator, such as an inability to respond appropriately to health problems or consent to medical care, or an inability to manage savings or routine expenses.~~
 - 4.3. If the applicant or client has been determined to be incapable of making important decisions with regard to ~~his~~ the applicant's or client's personal or financial affairs, and if nonjudicial, less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates are inadequate to protect the applicant or client from a substantial and unreasonable risk to the applicant's or client's health, safety, welfare, or property, the applicant's or client's nearest living relatives shall be notified with an accompanying recommendation that a guardian or conservator be appointed.
 - 5.4. If the applicant or client is capable of making important decisions concerning ~~his~~ the applicant's or client's health, welfare, and property, either independently or through other less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates, the applicant's or client's nearest living relative shall be notified with an accompanying recommendation that any existing guardian or conservator be removed.
 - 6.5. If the client has been determined to require or no longer require assistance in the management of financial or personal affairs, and the nearest living relative cannot be found or is incapable of or not interested in caring for the client's interest, the mental health agency shall assist in the recruitment or removal of a trustee, representative payee, advocate, conservator, or guardian. Nothing in this Section shall be construed to require the Department or any regional authority or service provider to pay for the recruitment, appointment or removal of a trustee, representative payee, advocate, conservator, or guardian.
 6. The assessment or periodic review should identify the specific area or areas of the client's functioning that forms the basis of the recommendation for the appointment or removal of a guardian or conservator, such as an inability to respond appropriately to health problems or consent to medical care, or an inability to manage savings or routine expenses.
- 7.C. Mental health agencies shall devise procedures to ensure that suspected improprieties of a guardian, conservator, trustee, representative payee, or other fiduciary are reported to the court or other appropriate authorities.

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- D.** The informed consent of the client or guardian shall be required in at least the following circumstances:
1. Prior to medical treatment, including mental health treatment, except in the case of a true medical emergency as provided in A.R.S. § 36-512 or an emergency as provided in A.R.S. § 36-513 and R9-21-204;
 2. Prior to involvement of the client in research activities approved under Department rules or policy; and
 3. Prior to the client's admission to any program operated by a mental health agency, except pursuant to a court order as provided in A.R.S. Title 36, Chapter 5, Articles 4 and 5;
 4. Prior to the release of personal information to other mental health agencies or individuals, except as otherwise permitted by A.R.S. § 36-504, 36-509, or 36-517.01 or R9-21-209.
- E.** The authorization for medical treatment shall be given by:
1. The client if capable of making medical decisions and if not a minor or under guardianship;
 2. The client's guardian, if any; or
 3. A court of competent jurisdiction.
- F.** Consent to medical treatment shall be given voluntarily and only after the following information is provided to the client or guardian:
1. The intended outcome, nature and procedures involved in the proposed treatment;
 2. The risks, including side effects if any, of the proposed treatment as well as the risks of not proceeding;
 3. The alternatives to the proposed treatment, particularly alternatives offering less risk or other adverse effects; and
 4. That consent may be withheld or withdrawn at any time, with no punitive action taken against the client.
- G.** A consent form, which indicates that the information described in subsection (F) above was provided, shall be signed by the client or the guardian.
1. Consent may be revoked at any time by the client or guardian through a reasonably clear statement in writing.
 2. A client shall receive assistance in writing the revocation if necessary.
 3. If consent is revoked, treatment shall be promptly discontinued, provided that a course of treatment may be phased out where necessary to avoid the harmful effects of abrupt discontinuance.

R9-21-206.01. Informed Consent

- A.** Except in an emergency according to A.R.S. §§ 36-512 or 36-513 or R9-21-204, or a court order according to A.R.S. Title 36, Chapter 5, Articles 4 and 5, a mental health agency shall obtain written informed consent in at least the following circumstances:
1. Before providing a client a treatment with known risks or side effects, including:
 - a. Psychotropic medication,
 - b. Electro-convulsive therapy, or
 - c. Telemedicine;
 2. Before having a client participate in research activities approved under Department rules or policy; and
 3. Before admitting a client to any program operated by a mental health agency.
- B.** The informed consent in subsection (A) shall be voluntary and shall be obtained from:
1. If the client is determined to be competent according to R9-21-601(B), the client; or
 2. If a court of competent jurisdiction has adjudicated the client incompetent, the client's guardian.
- C.** If informed consent is required according to subsection (A), a behavioral health medical practitioner or a registered nurse with at least one year of behavioral health experience shall, before obtaining the informed consent, provide a client or, if applicable, the client's guardian with the following information:
1. The client's diagnosis;
 2. The nature of and procedures involved with the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 3. The intended outcome of the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 4. The risks, including any side effects, of the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 5. The risks of not proceeding with the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 6. The alternatives to the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency, particularly alternatives offering less risk or other adverse effects;
 7. That any informed consent given may be withheld or revoked orally or in writing at any time, with no punitive action taken against the client;
 8. The potential consequences of revoking the informed consent; and
 9. A description of any clinical indications that might require suspension or termination of the proposed treatment, research activity, or program operated by a mental health agency.

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- D.** To give informed consent for a treatment, participation in a research activity, or admission in a program operated by a mental health agency, a client or, if applicable, the client's guardian shall sign a document that includes:
1. An acknowledgment that the client or, if applicable, the client's guardian:
 - a. Received the information in subsection (C); and
 - b. Agrees to:
 - i. Use of the treatment for the client.
 - ii. Participation by the client in the research activity, or
 - iii. Admission of the client in the program operated by a mental health agency; and
 2. The signature of the client or, if applicable, the client's guardian.
- E.** A client or, if applicable, the client's guardian may revoke informed consent at any time orally or by submitting a written statement revoking the informed consent.
- F.** If informed consent is revoked according to subsection (E):
1. The treatment, the client's participation in a research activity, or the applicant's or client's admission to a program operated by a mental health agency shall be immediately discontinued, or
 2. If abrupt discontinuation of a treatment poses an imminent risk to a client, the treatment shall be phased out to avoid any harmful effects.
- G.** If a client or, if applicable, the client's guardian needs assistance with revoking informed consent according to subsection (E), the client or, if applicable, the client's guardian shall receive the assistance.

R9-21-207. Medication

- A.** Medication shall only be administered with the informed consent of the client or Title 36 guardian. Information relating to common risks and side effects of the medication, the procedures to be taken to minimize such risks, and a description of any clinical indications that might require suspension or termination of the drug therapy shall be available to the client, guardian, if any, and the staff in every mental health agency. Such information shall be available to family members in accordance with A.R.S. §§ 36-504, 36-509, and 36-517.01.
- B.** All clients have a right to be free from unnecessary or excessive medication.
- C.** Medication shall not be used as punishment, for the convenience of the staff, or as a substitute for other ~~mental~~ behavioral health services and shall be given in the least amount medically necessary with particular emphasis placed on minimizing side effects which otherwise would interfere with aspects of treatment.
- D.** Medication administered by a mental health agency shall be prescribed by a licensed physician, certified physician assistant, or a licensed nurse practitioner.
1. Psychotropic medication shall be prescribed by:
 - a. A psychiatrist who is a licensed physician; or
 - b. A licensed nurse practitioner, certified physician assistant, or physician trained or experienced in the use of psychotropic medication, who has seen the client and is familiar with the client's medical history or, in an emergency, is at least familiar with the client's medical history.
 2. Each client receiving psychotropic medication shall be seen monthly or as indicated in the client's ISP by a licensed nurse practitioner, certified physician's assistant or physician prescribing the medication, who shall note in the client's record:
 - a. The appropriateness of the current dosage,
 - b. All medication being taken by the client and the appropriateness of the mixture of medications,
 - c. Any signs of tardive dyskinesia or other side effects,
 - d. The reason for the use of the medication, and
 - e. The effectiveness of the medication.
 3. When a client on psychotropic medication receives a yearly physical examination, the results of the examination shall be reviewed by the physician prescribing the medication. The physician shall note any adverse effects of the continued use of the prescribed psychotropic medication in the client's record.
 4. Whenever a prescription for medication is written or changed, a notation of the medication, dosage, frequency of administration, and the reason why the medication was ordered or changed shall be entered in the client's record.
- E.** Self-administration of medication by clients shall be permitted unless otherwise restricted by the responsible physician or licensed nurse practitioner. Such clients shall be trained in self-administration of medication and, if necessary, shall be monitored by trained staff.
- F.** Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.
- G.** PRN orders for medication shall not be ~~used as pharmacological restraint~~ given for a drug used as a restraint.

R9-21-208. Property and Possessions

- A.** No mental health agency shall interfere with a client's right to acquire, retain and dispose of personal property, including the right to maintain an individual bank account, except where:
1. The client is under guardianship, conservatorship, or has a representative payee;

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2. Otherwise ordered by court; or
 3. A particular object, other than money or personal funds, poses an imminent threat of serious physical harm to the client or others. Any restriction on the client's control of property deemed to pose an imminent threat of serious physical harm shall be recorded in the client's record together with the reasons ~~therefor~~ the particular object poses an imminent threat of serious physical harm to the client or others.
- B.** If a mental health agency, which offers assistance to its clients in managing their funds, takes possession or control of a client's funds at the request of the client, guardian, or by court order, the mental health agency shall issue a receipt to the client or guardian for each transaction involving such funds. If deposited funds in excess of \$250 are held by the mental health agency, where the likelihood of the client's stay will exceed 30 days, an individual bank account or an amalgamated client trust account shall be maintained for the benefit of the client. All interest shall become the property of the client or the fair allocation ~~thereof of the interest~~ in the case of an amalgamated client trust account. The mental health agency shall provide a bond to cover client funds held.
1. Unless a guardian, conservator, or representative payee has been appointed, the client shall have an unrestricted right to manage and spend deposited funds.
 2. The mental health agency shall obtain prior written ~~authorization~~ permission from the client, the guardian or conservator for any arrangement involving shared or delegated management responsibilities. The ~~authorization~~ permission shall set forth the terms and conditions of the arrangement.
 3. Where the mental health agency has shared or delegated management responsibilities, the mental health agency shall meet the following requirements:
 - a. Client funds shall not be applied to goods or services which the mental health agency is obligated by law or funded by contract to provide, except as permitted by the client fee schedule authorized by the Department;
 - b. The mental health agency and its staff shall have no direct or indirect ownership or survivorship interest in the funds;
 - c. Such arrangements shall be accompanied by a training program, documented in the ISP, to eliminate the need for such assistance;
 - d. Staff shall not participate in arrangements for shared or delegated management of the client's funds except as representatives of the mental health agency;
 - e. Any arrangements made to transfer a client from one mental health agency to another shall include provisions for transferring shared or delegated management responsibilities to the receiving mental health agency;
 - f. The client shall be informed of all proposed expenditures and any expression of preference within reason shall be honored; and
 - g. Expenditures shall be made only for purposes which directly benefit the client in accordance with the client's interests and desires.
 4. A record shall be kept of every transaction involving deposited funds, including the date and amount received or disbursed, and the name of the person to or from whom the funds are received or disbursed. The client, guardian, conservator, mental health agency or regional human rights advocate or other representative may demand an accounting at any reasonable time, including at the time of the client's transfer, discharge or death.
 5. Any funds so deposited shall be treated for the purpose of collecting charges for care the same as any other property held by or on behalf of the client. The client or guardian shall be informed of any possible charges before the onset of services.

R9-21-209. Records

- A.** Records of a client who is currently receiving or has received services from a mental health agency ~~shall be~~ are private and ~~not open to inspection except~~ shall be disclosed only to those individuals authorized ~~pursuant~~ according to A.R.S. § 36-504, 36-507, 36-509, or 36-517.01 ~~federal and state law.~~
- B.** Inspection by the client, the client's guardian, attorney, paralegal working under the supervision of an attorney, or any other designated representative shall be permitted as follows:
1. ~~Except as prohibited by federal and state law, the client and, if applicable, the client's guardian shall be permitted to inspect and copy the client's record upon as soon as possible after a request, and no later than 10 working days after a request except as prohibited by A.R.S. § 36-507. If an attending physician determines that client inspection is contraindicated under A.R.S. § 36-507, the determination, the reasons therefor, and those portions of the record that are contraindicated shall be noted in the client record. Only those portions of the record that are contraindicated may be withheld from the client. If any portion of the client record is withheld under federal or state law as contraindicated, the physician mental health agency shall inform provide written notice to the client or, if applicable, the client's guardian of the right to grieve under Article 4 of this Chapter, including:~~
 - a. The reason the mental health agency is withholding a portion of the client's record.
 - b. An explanation of the client's right to a review of the decision to withhold a portion of the client's record, and
 - c. An explanation of the client's right to file a grievance according to Article 4 of this Chapter.
 2. ~~The client's guardian shall be permitted to inspect and copy the client's record upon request, except as prohibited by A.R.S. § 36-504, 36-507, 36-509 or 36-517.01.~~

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- 3-2. An attorney, paralegal working under the supervision of an attorney, or other designated representative of the client shall be permitted to inspect and copy the record, if such attorney or representative furnishes written authorization from the client or guardian.
- 4-3. When necessary for the understanding of the client; or guardian; and, if the client or the client's guardian provides authorization, when necessary for the understanding of an attorney, paralegal working under the supervision of an attorney, or designated representative, staff of the mental health agency possessing the records shall read or interpret the record for the client, guardian, attorney, paralegal working under the supervision of an attorney, or designated representative. Upon request, clients shall also be permitted to examine a copy of their record in accordance with paragraph (B)(1). The mental health agency may require the client to examine the record in the presence of a staff person when necessary to ensure the integrity of the record.
- C. Inspection by specially authorized persons or entities shall be permitted as follows unless otherwise prohibited by federal or state law:
1. Records of a client may be available to ~~Those those~~ individuals and agencies listed in A.R.S. § 36-509.
 2. Records of a client shall be open to inspection upon proper judicial order, whether or not such order is made in connection with pending judicial proceedings.
 3. Records of a client shall be made available to a physician who requests such records in the treatment of a medical emergency, provided that the client is given notice of such access as soon as possible ~~but no later than 12 hours from the request~~.
 4. Records of a client shall be made available to Division staff authorized by the Department to monitor the quality of services being provided by the mental health agency to the client.
 5. Records of a client shall be made available to guardians and family members actively participating in the client's care, treatment or supervision as provided by A.R.S. §§ 36-504, 36-509(A)(8) and (B) and 36-517.01. Except when inspection of a client's record is required under a proper judicial order or by a physician in a medical emergency, a client, guardian or family member may challenge the decision to allow or deny inspection of the record by filing a request for administrative and judicial review in accordance with the provisions of A.R.S. § 36-517.01 or other applicable federal or state law. Once a request is filed, no further disclosure of records shall be made until the review has been completed.
- D. Unless otherwise permitted by federal or state law, Records records shall be open to inspection by other third parties only upon the ~~written consent~~ authorization of the client or guardian. Before ~~consent~~ authorization is given, the client or guardian shall be offered an opportunity to examine the information to be disclosed and be provided with the name of the recipient and uses to be made of the information.
- E. The fee for copying records obtained under this rule shall be no more than the actual expense of reproducing the record or the requested parts ~~thereof~~ and may be limited further by A.R.S. § 12-2295.
- F. A client or guardian shall be informed of a court order or subpoena commanding production of a client's record as soon as possible and in any event prior to the date for production and of the client's or guardian's right to request the court to quash or modify the order or subpoena.
- G. The records maintained by the mental health agency shall contain accurate, complete, timely, pertinent and relevant information.
1. If a client or guardian believes that the record contains inaccurate or misleading information, the client or guardian may prepare, with assistance if requested, a statement of disagreement which shall be entered in the record.
 2. If a client or guardian objects to the collection of the information in the record, the client or guardian may file a grievance pursuant according to Article 4 of this Chapter.
- H. A list shall be kept of every person or organization who inspects the client's records, other than the client's clinical team, the uses to be made of that information, and the person authorizing access. A list of such access shall be placed in the client's record and shall be made available to the client or other designated representative.

R9-21-210. Policies and Procedures of Service Providers

- A. A mental health agency may establish ~~reasonable~~ policies and procedures for the provision of ~~mental behavioral~~ health services or community services which that are consistent with Articles 1 through 5 of these rules and with all other requirements of Arizona law. No policy or procedure may restrict any right protected by these rules.
- B. The mental health agency shall inform all prospective clients of its policies and procedures prior to ~~their consenting the~~ the client or, if applicable, the client's guardian giving informed consent to the client's admission to the program pursuant according to R9-21-206(D)(3) R9-21-206.01(B)(3).
- C. If a client acts in a manner that is seriously in disregard of a reasonable policy, the agency director shall make all reasonable efforts to respond to the situation, including making reasonable accommodation to the program's policy if the client's failure to conform to a reasonable policy is due to the client's disability.

ARTICLE 3. INDIVIDUAL SERVICE PLANNING FOR MENTAL BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-315. Renumbered

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**ARTICLE 4. APPEALS, GRIEVANCE GRIEVANCES, AND REQUESTS FOR INVESTIGATION PROCEDURE
FOR PERSONS WITH SERIOUS MENTAL ILLNESS**

R9-21-315, R9-21-401, Appeals

- A.** A client or applicant may file an appeal concerning decisions regarding eligibility for mental health services, including Title XIX services, fees and waivers; assessments and further evaluations; service and treatment plans and planning decisions; and the implementation of those decisions. Appeals regarding a determination of categorical ineligibility for Title XIX shall be directed to the agency which made that determination.
1. Disagreements among employees of the Department, the regional authority, clinical teams, and service providers concerning services, placement, or other issues are to be resolved using Departmental guidelines, rather than this rule.
 2. The case manager shall attempt to resolve disagreements prior to utilizing this appeal procedure; however, the client's right to file an appeal shall not be interfered with by any mental health agency or the Department.
 3. The Office of Human Rights shall assist clients in resolving appeals pursuant to R9-21-105.
- B.** Applicants and clients shall be informed of their right to appeal at the time an application for services is made, when an eligibility determination is made, when a decision regarding fees or the waiver thereof is made, upon receipt of the assessment report, during the ISP, ITDP, and review meetings, at the time an ISP, ITDP, and any modification thereto is distributed, when any service is suspended or terminated, and at such other times set forth in this Article. The notice shall be in writing in English and Spanish and shall include:
1. The client's right to appeal and to a fair hearing pursuant to R9-21-315;
 2. The method by which an appeal and fair hearing may be obtained;
 3. That the client may represent himself or use legal counsel or other appropriate representative;
 4. The services available to assist the client from the Office of Human Rights, Human Rights Committees, State Protection and Advocacy System, and other peer support and advocacy services;
 5. What action the mental health agency or Department intends to take;
 6. The reasons for the intended action;
 7. The specific rules or laws that support such action; and
 8. An explanation of the circumstances under which services will continue if an appeal or fair hearing is requested.
- C.** The right to appeal created herein does not include the right to appeal a court order entered pursuant to A.R.S. Title 36, Chapter 5, Articles 4 and 5. The following issues may be appealed:
1. Decisions regarding the individual's eligibility for mental health services;
 2. The sufficiency or appropriateness of the assessment or any further evaluation;
 3. The long-term view, service goals, objectives, or timelines stated in the ISP or ITDP;
 4. The recommended services identified in the assessment report, ISP, or ITDP;
 5. The actual services to be provided, as described in the ISP, plan for interim services, or ITDP;
 6. The access to or prompt provision of services provided under Title XIX;
 7. The findings of the clinical team with regard to the client's competency, capacity to make decisions, need for guardianship or other protective services, or need for special assistance;
 8. The review, modification, or termination of an ISP, ITDP, or portion thereof;
 9. The application of the procedures and timetables as set forth in this Article for developing the ISP or ITDP;
 10. The implementation of the ISP or ITDP;
 11. The decision to provide service planning, including the provision of assessment or case management services, to a client who is refusing such services, or a decision not to provide such services to such an client; or
 12. Decisions regarding a client's fee assessment or the denial of a request for a waiver thereof.
- D.** Initiation of the appeal.
1. An appeal may be initiated by any of the following persons:
 - a. The client or applicant requesting mental health services;
 - b. The client's or applicant's guardian; or
 - c. The client's or applicant's designated representative.
 2. An appeal is initiated by notifying the director of the regional authority in writing of the decision, report, plan or action being appealed, including a brief statement of the reasons for the appeal and the current address and telephone number, if available, of the applicant or client and designated representative.
 3. An appeal must be initiated within 35 days of the decision, report, plan, or action being appealed. However, the director of the regional authority shall accept a late appeal for good cause. If the regional authority director refuses to accept a late appeal, the director shall notify the individual or client in writing, with a statement of reasons for the decision. Within ten days of the notification, the client or applicant may request review of that decision by the deputy director of the division, who shall act within 15 days of receipt of the request for review. The decision of the deputy director shall be final.
 4. Within five days of receipt of an appeal, the director of the regional authority shall inform the client in writing in English and Spanish that the appeal has been received and of the procedures which will be followed during the appeal.

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E. Informal conference with the regional authority.

1. Within seven days of receipt of the notice of appeal, the director of the regional authority shall hold an informal conference with the client, any designated representative and/or guardian, the case manager and representatives of the clinical team, and a representative of the service provider, if appropriate.
 - a. The regional authority director shall schedule the conference at a convenient time and place and shall inform all participants in writing of the time, date, and location two days prior to the conference.
 - b. Individuals may participate in the conference by telephone.
2. The director of the regional authority shall chair the informal conference and shall seek to mediate and resolve the issues in dispute. To the extent that resolution satisfactory to the client or guardian is not achieved, the regional authority director shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
3. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
4. If the informal conference with the director of the regional authority does not resolve the issues in dispute to the satisfaction of the client or guardian, the client or guardian shall be informed that the matter will be further appealed to the Division, and of the procedure for requesting waiver of the informal conference with the Division.
5. If resolution satisfactory to the client or guardian is achieved, the director of the regional authority shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented.

F. Informal conference with the Division.

1. Within three days of the conclusion of an informal conference with the regional authority, the director of the regional authority shall notify the deputy director of the Division if the informal conference failed to resolve the appeal and shall immediately forward the client's notice of appeal, all documents relevant to the resolution of the appeal and any agreed statements of fact.
2. Within 15 days of the notification from the regional authority director, the deputy director of the Division shall hold an informal conference with the client, any designated representative and/or guardian, the case manager, and representatives of the clinical team, the service provider, if appropriate, for the purpose of mediating and resolving the issues being appealed.
 - a. The deputy director of the Division shall schedule the conference at a convenient time and place and shall inform the participants in writing of the time, date, and location five days prior to the conference.
 - b. Individuals may participate in the conference by telephone.
 - c. If a client is unrepresented at the conference but needs assistance, or if for any other reason the deputy director of the Division determines the appointment of a representative to be in the client's best interest, the deputy director may designate a human rights advocate or other person to assist the client in the appeal.
3. To the extent that resolution satisfactory to the client or guardian is not achieved, the deputy director shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
4. If resolution satisfactory to the client or guardian is achieved, the deputy director shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved, and the date by which the resolution will be implemented.
5. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
6. The client or guardian may waive the informal conference with the Division. If the conference is waived or if all issues in dispute are not resolved to the satisfaction of the client or guardian at the conference with the Division, the appeal shall proceed to a fair hearing under the provisions of subsection (G).

G. The fair hearing.

1. Within three days of the informal conference with the Division, if the conference failed to resolve the appeal, or within five days of the date the conference was waived, the deputy director of the Division shall notify the director to schedule a fair hearing.
2. Within five days of the notification, the director shall send a written notice of fair hearing to all parties, informing them of the time and place of the hearing, the name, address, and telephone number of the hearing officer, and the issues to be resolved. The notice shall also be sent to the appropriate human rights committee and the Office of Human Rights if the client is in need of special assistance.
3. Not less than 20 nor more than 30 days from such notice, the Department shall hold a fair hearing on the appeal in a manner consistent with A.R.S. §§ 36-111 and 36-112, and 41-1061 et seq. (the Administrative Procedure Act), and those portions of R9-1-101 through R9-1-126 which are not inconsistent with this Article. The client or any designated representative and/or guardian may request that the hearing be scheduled in a shorter or longer time. The

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Department shall make reasonable efforts to accommodate such request.

4. During the pendency of the appeal, the client, any designated representative and/or guardian, the clinical team, and representatives of any service providers may agree to implement any part of the ISP or ITDP or other matter under appeal without prejudice to the appeal.
5. The hearing shall be conducted by an impartial hearing officer appointed by the Department. The hearing officer may not be an employee of the Department, a regional authority or of a service provider under contract or subcontract with the Department. The Department may contract with a qualified individual to serve as a hearing officer under this rule.
6. The client or applicant shall have the right to be represented at the hearing by a person chosen by the client or applicant at the client's or applicant's own expense, in accordance with Rule 31(a)(3), Rules of the Supreme Court.
7. The client, any designated representative and/or guardian, and the opposing party shall have the right to present any evidence relevant to the issues under appeal and to call and examine witnesses. The Division shall have the right to appear to present legal argument.
8. The client and any designated representative and/or guardian shall have the right to examine and copy at a reasonable time prior to the hearing all records held by the Department, regional authority, or service provider pertaining to the client and the issues under appeal, including all records upon which the ISP or ITDP decisions were based.
9. Any portion of the hearing may be closed to the public if the client requests or if the hearing officer determines that it is necessary to prevent the unwarranted invasion of a client's privacy or that public disclosure would pose a substantial risk of harm to a client.
10. Within five days of the conclusion of the hearing, the hearing officer shall prepare and send a written, proposed decision to the director of the Department, together with the appeal record. The proposed decision shall be based exclusively on the evidence introduced at the hearing, shall designate those issues which relate to Title XIX services, and shall include findings of fact, conclusions, and a recommendation for appropriate action.
11. Within 15 days of the conclusion of the hearing, the director shall render a final written decision, based upon the findings, conclusions, and recommendations of the hearing officer.
 - a. The decision shall include a concise statement of the facts found, a summary of the evidence relied upon, the decision and the reasons for so deciding and a notice of the right to seek rehearing under R9-1-120 and judicial review under A.R.S. § 36-113.
 - b. The decision shall also include a notice to the parties of their right to appeal to AHCCCSA for review of decisions related to Title XIX services.
 - c. The decision shall be mailed by certified mail to the parties to the hearing, their designated representatives, and the Division.
 - d. The Department shall arrange to have the director's decision explained to the client, together with the right to seek rehearing, judicial review, or appeal to AHCCCSA, in a manner that is understandable to the client or the client's designated representative.

H. Expedited appeal.

1. At the time an appeal is initiated, the applicant, client, or mental health agency may request in writing an expedited appeal on issues related to crisis or emergency services or for good cause. Any appeal from a decision denying admission to or continued stay at an inpatient psychiatric facility due to lack of medical necessity shall be accompanied by all medical information necessary to resolution of the appeal and shall be expedited.
2. An expedited appeal shall be conducted in accordance with the provisions of this rule, except as provided for in this subsection.
3. Within one day of receipt of an expedited appeal, the director of the regional authority shall inform the client in writing in English and Spanish that the appeal has been received.
4. The director of the regional authority shall accept an expedited appeal on issues related to crisis or emergency services. The regional director shall also accept an expedited appeal for good cause. If the regional authority director refuses to expedite the appeal based on a determination that good cause does not exist, the director shall notify the applicant or client in writing within one day of the initiation of the appeal, with a statement of reasons for the decision, and shall proceed with the appeal in accordance with the provisions of this rule. Within three days of the notification of refusal to expedite the appeal for good cause, the client or applicant may request review of the decision by the deputy director of the Division, who shall act within one day. The decision of the deputy director shall be final.
5. If the regional director accepts the appeal for expedited consideration, the director shall hold the informal conference pursuant to R9-21-315(E) within two days of the initiation of the appeal. The regional director shall schedule the conference at a convenient time and place and shall inform all participants of the time, date and location prior to the conference.
6. Within one day of the conclusion of an informal conference with the regional authority, the director of the regional authority shall notify the deputy director of the Division if the informal conference failed to resolve the appeal and shall immediately forward the client's notice of appeal and any agreed statements of fact.
7. Within two days of the notification from the regional authority director, the deputy director of the Division shall hold the informal conference pursuant to R9-21-315(F).

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8. Within one day of the informal conference with the Division, if the conference failed to resolve the appeal, or within two days of the date the conference was waived, the deputy director shall notify the director to schedule a fair hearing.
 9. Within one day of notification, the director shall send a written notice of fair hearing in accordance with R9-21-315(G)(2).
 10. Within five days of such notice, the Department shall hold a fair hearing on the appeal in accordance with R9-21-315(G)(3).
 11. Within one day of the conclusion of the hearing, the hearing officer shall prepare and send a written, proposed decision to the director of the Department in accordance with R9-21-315(G)(10).
 12. Within two days of the conclusion of the hearing, the director shall render a final written decision in accordance with R9-21-315(G)(11). The decision of the director is the final decision of the Department on all issues and there shall be no right to a rehearing before the director.
- I.** Appeal of Title XIX services.
1. Within 15 days of the decision of the director, the client may appeal the decisions relating to Title XIX services to AHCCCSA by filing a written notice of appeal with the Department. The client may request a de novo hearing or a record review with oral argument before AHCCCSA.
 2. An appeal to AHCCCSA does not preclude a client or individual from also seeking rehearing and judicial review pursuant to R9-21-315(J) where appropriate.
- J.** Rehearing or review of decision. A client or applicant aggrieved by the director's decision on issues not related to Title XIX services must file for rehearing within 15 days of service of the decision. The decision of the director on rehearing is the final decision of the Department on all decisions not related to Title XIX services.
- K.** Judicial review. A client or applicant aggrieved by a final decision of the Department may, within 35 days of receipt of the decision of the director after a rehearing, seek judicial review, in accordance with the standards and procedures contained in A.R.S. §§ 12-901 et seq.
- L.** Standard and burden of proof.
1. The standard of proof on all issues shall be by a preponderance of the evidence.
 2. The burden of proof on the issue of the need for or appropriateness of health services shall be on the person appealing.
 3. The burden of proof on the issue of the sufficiency of the assessment and further evaluation, and the need for guardianship, conservatorship, or special assistance shall be on the agency which made the decision.
 4. The burden of proof on issues relating to services or placements shall be on the party advocating the more restrictive alternative.
- M.** Implementation of final decision. Within five days after a satisfactory resolution is achieved at an informal conference or after the expiration of an appeal period when no appeal is taken, or after the exhaustion of all appeals and subject to the final decision thereon, the director shall implement the final decision and shall notify the client, any designated representative and/or guardian, and Division of such action.
- N.** Appeal log.
1. The Department shall maintain a public log of all appeals filed under this rule. The director of the regional authority shall forward to the Department all information necessary for the accurate and timely maintenance of the public log.
 2. The public log shall not include personally identifiable information but shall be a public record, available for inspection and copying by any person.
 3. With respect to each entry, the Department's public logs shall contain:
 - a. A unique docket number assigned by the Department;
 - b. A substantive but concise description of the appeal including whether the appeal related to the provision of Title XIX services;
 - c. The date of the filing of appeal;
 - d. The date of the initial decision appealed from;
 - e. The date, nature and outcome of all subsequent decisions, appeals, or other relevant events; and
 - f. A substantive but concise description of the final decision and the action taken by the agency director and deputy director of the Division and the date the action was taken.
- A.** An applicant or client may file an appeal concerning decisions regarding eligibility for behavioral health services, including Title XIX services, fees and waivers; assessments and further evaluations; service and treatment plans and planning decisions; and the implementation of those decisions. Appeals regarding a determination of categorical ineligibility for Title XIX shall be directed to the agency that made that determination.
1. Disagreements among employees of the Department, the regional authority, clinical teams, and service providers concerning services, placement, or other issues are to be resolved using Departmental guidelines, rather than this Chapter.
 2. The case manager shall attempt to resolve disagreements prior to utilizing this appeal procedure; however, the client's right to file an appeal shall not be interfered with by any mental health agency or the Department.

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3. The Office of Human Rights shall assist clients in resolving appeals according to R9-21-105.
4. If a client or, if applicable, an individual on behalf of the client, files an appeal of a modification or termination of a behavioral health service according to this Section, the client's service shall continue while the appeal is pending unless:
 - a. A qualified clinician determines that the modification or termination is necessary to avoid a serious or immediate threat to the health or safety of the client or another individual; or
 - b. The client or, if applicable, the client's guardian agrees in writing to the modification or termination.
- B.** Applicants and clients shall be informed of their right to appeal at the time an application for services is made, when an eligibility determination is made, when a decision regarding fees or the waiver of fees is made, upon receipt of the assessment report, during the ISP, ITDP, and review meetings, at the time an ISP, ITDP, and any modification to the ISP or ITDP is distributed, when any service is suspended or terminated, and at any other time provided by this Chapter. The notice shall be in writing in English and Spanish and shall include:
 1. The client's right to appeal and to an administrative hearing according to A.R.S. § 41-1092.03;
 2. The method by which an appeal and an administrative hearing may be obtained;
 3. That the client may represent himself or use legal counsel or other appropriate representative;
 4. The services available to assist the client from the Office of Human Rights, Human Rights Committees, State Protection and Advocacy System, and other peer support and advocacy services;
 5. What action the mental health agency or Department intends to take;
 6. The reasons for the intended action;
 7. The specific rules or laws that support such action; and
 8. An explanation of the circumstances under which services will continue if an appeal or an administrative hearing is requested.
- C.** The right to appeal in this Section does not include the right to appeal a court order entered according to A.R.S. Title 36, Chapter 5, Articles 4 and 5. The following issues may be appealed:
 1. Decisions regarding the individual's eligibility for behavioral health services;
 2. The sufficiency or appropriateness of the assessment or any further evaluation;
 3. The long-term view, service goals, objectives, or timelines stated in the ISP or ITDP;
 4. The recommended services identified in the assessment report, ISP, or ITDP;
 5. The actual services to be provided, as described in the ISP, plan for interim services, or ITDP;
 6. The access to or prompt provision of services provided under Title XIX;
 7. The findings of the clinical team with regard to the client's competency, capacity to make decisions, need for guardianship or other protective services, or need for special assistance;
 8. A denial of a request for a review of, the outcome of a review of, a modification to or failure to modify, or a termination of an ISP, ITDP, or portion of an ISP or ITDP;
 9. The application of the procedures and timetables as set forth in this Article for developing the ISP or ITDP;
 10. The implementation of the ISP or ITDP;
 11. The decision to provide service planning, including the provision of assessment or case management services, to a client who is refusing such services, or a decision not to provide such services to such a client;
 12. Decisions regarding a client's fee assessment or the denial of a request for a waiver of fees;
 13. Denial of payment for a client; and
 14. Failure of the regional authority or the Division to act within the time-frames for appeal established in this Chapter.
- D.** Initiation of the appeal.
 1. An appeal may be initiated by a client or applicant requesting behavioral health services or by any of the following persons on behalf of a client or applicant requesting behavioral health services:
 - a. The client's or applicant's guardian,
 - b. The client's or applicant's designated representative, or
 - c. A service provider of the client, if the client or, if applicable, the client's guardian gives permission to the service provider;
 2. An appeal is initiated by notifying the director of the regional authority or the director's designee orally or in writing of the decision, report, plan or action being appealed, including a brief statement of the reasons for the appeal and the current address and telephone number, if available, of the applicant or client and designated representative.
 3. An appeal must be initiated within 60 days of the decision, report, plan, or action being appealed. However, the director of the regional authority or the director's designee shall accept a late appeal for good cause. If the regional authority director or the director's designee refuses to accept a late appeal, the director or director's designee shall notify the individual or client in writing, with a statement of reasons for the decision. Within ten days of the notification, the client or applicant may request review of that decision by the deputy director of the division, who shall act within 15 days of receipt of the request for review. The decision of the deputy director shall be final.
 4. Within five days of receipt of an appeal, the director of the regional authority or the director's designee shall inform the client in writing in English and Spanish that the appeal has been received and of the procedures which will be fol-

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lowed during the appeal.

E. Informal conference with the regional authority.

1. Within seven days of receipt of the notice of appeal, the director of the regional authority or the director's designee shall hold an informal conference with the client, any designated representative and/or guardian, the case manager and representatives of the clinical team, and a representative of the service provider, if appropriate.
 - a. The regional authority director or the director's designee shall schedule the conference at a convenient time and place and shall inform all participants in writing of the time, date, and location two days prior to the conference.
 - b. Individuals may participate in the conference by telephone.
2. The director of the regional authority or the director's designee shall chair the informal conference and shall seek to mediate and resolve the issues in dispute. To the extent that resolution satisfactory to the client or guardian is not achieved, the regional authority director or director's designee shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
3. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
4. If the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter will be further appealed to the Division, and of the procedure for requesting waiver of the informal conference with the Division.
5. If a client or, if applicable, the client's guardian waives the right to an informal conference with the Division according to subsection (E)(4) or, if the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the regional authority shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. For a client who needs special assistance, send a copy of the notice in subsection (5)(a) to the appropriate human rights committee.
6. If, at the informal conference, a client or, if applicable, the client's guardian requests that the regional authority file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Division shall file the request within three days of the informal conference.
7. If resolution satisfactory to the client or guardian is achieved, the director of the regional authority or the director's designee shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented.

F. Informal conference with the Division.

1. Within three days of the conclusion of an informal conference with the regional authority according to subsection (E)(4), the director of the regional authority or the director's designee shall notify the deputy director of the Division and shall immediately forward the client's notice of appeal, all documents relevant to the resolution of the appeal and any agreed statements of fact.
2. Within 15 days of the notification from the regional authority director or the director's designee, the deputy director of the Division shall hold an informal conference with the client, any designated representative and/or guardian, the case manager, and representatives of the clinical team, the service provider, if appropriate, for the purpose of mediating and resolving the issues being appealed.
 - a. The deputy director of the Division shall schedule the conference at a convenient time and place and shall inform the participants in writing of the time, date, and location five days prior to the conference.
 - b. Individuals may participate in the conference by telephone.
 - c. If a client is unrepresented at the conference but needs assistance, or if for any other reason the deputy director of the Division determines the appointment of a representative to be in the client's best interest, the deputy director may designate a human rights advocate or other person to assist the client in the appeal.
3. To the extent that resolution satisfactory to the client or guardian is not achieved, the deputy director shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
4. If resolution satisfactory to the client or guardian is achieved, the deputy director shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved, and the date by which the resolution will be implemented.

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5. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
6. If all issues in dispute are not resolved to the satisfaction of the client or guardian at the informal conference with the Division, the Division shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. For a client who needs special assistance, send a copy of the notice in subsection (6)(a) to the Office of Human Rights and the appropriate human rights committee.
7. If, at the informal conference, a client or, if applicable, the client's guardian requests that the Division file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Division shall file the request within 3 days of the informal conference.

G. Expedited appeal.

1. At the time an appeal is initiated, the applicant, client, or mental health agency may request orally or in writing an expedited appeal on issues related to crisis or emergency services or for good cause. Any appeal from a decision denying admission to or continued stay at an inpatient psychiatric facility due to lack of medical necessity shall be accompanied by all medical information necessary to resolution of the appeal and shall be expedited.
2. An expedited appeal shall be conducted in accordance with the provisions of this rule, except as provided for in this subsection.
3. Within one day of receipt of an expedited appeal, the director of the regional authority shall inform the client in writing in English and Spanish that the appeal has been received.
4. The director of the regional authority shall accept an expedited appeal on issues related to crisis or emergency services. The regional director shall also accept an expedited appeal for good cause. If the regional authority director refuses to expedite the appeal based on a determination that good cause does not exist, the director shall notify the applicant or client in writing within one day of the initiation of the appeal, with a statement of reasons for the decision, and shall proceed with the appeal in accordance with the provisions of this rule. Within three days of the notification of refusal to expedite the appeal for good cause, the client or applicant may request review of the decision by the deputy director of the Division, who shall act within one day. The decision of the deputy director shall be final.
5. If the regional director accepts the appeal for expedited consideration, the director shall hold the informal conference according to R9-21-401(E) within two days of the initiation of the appeal. The regional director shall schedule the conference at a convenient time and place and shall inform all participants of the time, date and location prior to the conference.
6. If the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter will be further appealed to the Division, and of the procedure for requesting waiver of the informal conference with the Division.
7. If a client or, if applicable, the client's guardian waives the right to an informal conference with the Division or, if the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the regional authority shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. For a client who needs special assistance, send a copy of the notice in subsection (7)(a) to the Office of Human Rights and the appropriate human rights committee.
8. If, at the informal conference, a client or, if applicable, the client's guardian requests that the regional authority file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Division shall file the request within one day of the informal conference.
9. Within one day of the conclusion of an informal conference with the regional authority, the director of the regional authority shall notify the deputy director of the Division if the informal conference failed to resolve the appeal and shall immediately forward the client's notice of appeal and any agreed statements of fact, unless the client or, if applicable, the client's guardian waived the client's right to an informal conference with the Division or the issues in dispute are related to the client's eligibility for behavioral health services.
10. Within two days of the notification from the regional authority director, the deputy director of the Division shall hold the informal conference according to R9-21-401(F).

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11. If all issues in dispute are not resolved to the satisfaction of the client or if applicable, the client's guardian at the informal conference with the Division, the Division shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the Division to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. For a client who needs special assistance, send a copy of the notice in subsection (11)(a) to the Office of Human Rights and the appropriate human rights committee.
12. If, at the informal conference, a client or, if applicable, the client's guardian requests that the Division file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Division shall file the request within one day of the informal conference.
- H.** If a client requests an administrative hearing according to A.R.S. § 41-1092.03, the administrative hearing shall proceed according to A.R.S. Title 41, Chapter 6, Article 10.
- I.** Appeal of Title XIX services.
 1. Within 15 days of the decision of the director, the client may appeal the decisions relating to Title XIX services to AHCCCSA by filing a written notice of appeal with the Department. The client may request a de novo hearing or a record review with oral argument before AHCCCSA.
 2. An appeal to AHCCCSA does not preclude a client or individual from also seeking rehearing and judicial review according to A.R.S. Title 41, Chapter 6, Article 10 where appropriate.
- J.** Standard and burden of proof.
 1. The standard of proof on all issues shall be by a preponderance of the evidence.
 2. The burden of proof on the issue of the need for or appropriateness of behavioral health services or community services shall be on the person appealing.
 3. The burden of proof on the issue of the sufficiency of the assessment and further evaluation, and the need for guardianship, conservatorship, or special assistance shall be on the agency which made the decision.
 4. The burden of proof on issues relating to services or placements shall be on the party advocating the more restrictive alternative.
- K.** Implementation of final decision. Within five days after a satisfactory resolution is achieved at an informal conference or after the expiration of an appeal period when no appeal is taken, or after the exhaustion of all appeals and subject to the final decision thereon, the director shall implement the final decision and shall notify the client, any designated representative or guardian, and Division of such action.
- L.** Appeal log.
 1. The Department shall maintain a public log of all appeals filed under this rule. The director of the regional authority shall forward to the Department all information necessary for the accurate and timely maintenance of the public log.
 2. The public log shall not include personally identifiable information but shall be a public record, available for inspection and copying by any person.
 3. With respect to each entry, the Department's public logs shall contain:
 - a. A unique docket number assigned by the Department;
 - b. A substantive but concise description of the appeal including whether the appeal related to the provision of Title XIX services;
 - c. The date of the filing of appeal;
 - d. The date of the initial decision appealed from;
 - e. The date, nature and outcome of all subsequent decisions, appeals, or other relevant events; and
 - f. A substantive but concise description of the final decision and the action taken by the agency director and deputy director of the Division and the date the action was taken.

R9-21-401. R9-21-402. Scope

- A.** It is the policy of the Division to conduct investigations and bring matters to a resolution in four circumstances: first, in the event of a death of a client; second, whenever there is alleged to have occurred a rights violation; third, whenever there is alleged to exist a condition requiring investigation because it is dangerous, illegal or inhumane; and fourth, in any other case where an investigation would be in the public interest, as determined by the director of the Department or the deputy director of the Division. The purpose of this Article is to implement that policy. All investigations pursuant according to this Article shall be carried out in a prompt and equitable manner and with due regard for the dignity and rights of all persons involved. This Article does not obviate the need for systematically reporting, where appropriate, accidents and injuries involving clients.
- B.** This grievance and investigation procedure applies to any allegation that a rights violation or a condition requiring investigation, as defined in R9-21-101, has occurred or currently exists.
 1. A grievance may be filed by a client, guardian, human rights advocate, human rights committee, State Protection and Advocacy System, designated representative, or any other concerned person when a violation of the client's rights or of the rights of several clients has occurred.

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2. A request for an investigation may be filed by any person whenever a condition requiring investigation occurs or has occurred.
3. Allegations about the need for or appropriateness of ~~mental~~ behavioral health services should generally not be considered a grievance under this Article but instead should be addressed ~~pursuant~~ according to the Individual Service Planning rules, R9-21-301 ~~et seq., through R9-21-314 and R9-21-401, where as applicable.~~

~~R9-21-402. R9-21-403.~~ Initiating a Grievance or Investigation

- ~~A.~~** Any individual may file a grievance regarding an abridgement by a mental health agency of one or more of a client's rights in Article 2 of this Chapter.
- ~~B.~~** Any individual may request an investigation regarding a condition requiring investigation.
- ~~C.~~** An employee of or individual under contract with one of the following shall file a grievance if the employee has reason to believe that a mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter or that a condition requiring investigation exists, and shall receive disciplinary action for failure to comply with this subsection:
1. A service provider.
 2. A regional authority.
 3. An inpatient facility, or
 4. The Division.
- ~~D.~~** The director of a service provider or the director of a regional authority shall file a grievance if:
1. The director receives a non-frivolous allegation that:
 - a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
 - b. A condition requiring investigation exists; or
 2. The director has reason to believe that there exists or has occurred a condition requiring investigation in an mental health agency or program.
- ~~E.~~** The director or deputy director of the Department shall request an investigation if:
1. The director or deputy director determines that it would be in the best interests of a client, the Department, or the public; or
 2. The director or deputy director receives a non-frivolous allegation or has reason to believe that:
 - a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
 - b. A condition requiring investigation exists.
- ~~A.F.~~** Any person may make an oral or written grievance or request for investigation to the To file a grievance, an individual shall communicate the grievance orally or submit the grievance in writing to the director of or any employee of a mental health agency who shall, if the grievance or request contains a non-frivolous allegation that there has occurred a rights violation or condition requiring investigation, forward the grievance to the appropriate person as set forth in R9-21-403. If asked to do so by a client, an employee shall assist the client in making an oral or written grievance or shall direct the client to the available supervisory or managerial staff who shall assist the client in making an oral or written grievance.
- ~~B.~~** Any employee of a service provider, regional authority, inpatient facility, or the Division who has reason to believe that a rights violation or condition requiring investigation has occurred shall forthwith file a grievance or a request for investigation. Failure of an employee to file a grievance or request for investigation, to assist a client in filing a grievance, or to otherwise fail to forward a grievance submitted by a client shall be grounds for appropriate disciplinary action.
- ~~C.~~** The director of a service provider, the director of a regional authority, or the deputy director of the Division shall initiate a grievance under this Article whenever there is a non-frivolous allegation that there has occurred a rights violation in an agency or program.
- ~~D.~~** The director of a service provider, the director of a regional authority, or the deputy director of the Division shall initiate an investigation under this rule whenever there is a non-frivolous allegation or whenever there is reason to believe that there exists or has occurred a condition requiring investigation in an agency or program.
- ~~E.~~** The director of the Department or the deputy director of the Division may initiate an investigation under this rule whenever the director or deputy director determines that an investigation would be in the best interests of the client, the Department, or the public.
- ~~F.G.~~** Any grievance or request for investigation shall be accurately and completely reduced to writing on a Department-provided grievance or request for investigation form provided by the Department by:
1. The individual filing the grievance or request for investigation, or
 2. The mental health agency to whom the grievance or request for investigation is made.

~~R9-21-403. R9-21-404.~~ Persons Responsible for Resolving Grievances and Requests for Investigations

- ~~A.~~** Rights violations:
1. Allegations involving rights violations other than physical or sexual abuse which occurred in an agency which is operated by, or as a result of an action of a person employed by, a mental health agency, except a mental health agency operated by a governmental entity, shall be addressed to and initially decided by the director of the appropriate regional authority.
 2. Allegations involving rights violations other than physical or sexual abuse which occurred in an agency operated

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~~exclusively by, or as a result of an action of a person employed by, a governmental entity shall be addressed to and initially decided by the director of the agency.~~

- ~~3. Allegations involving physical or sexual abuse which occurred in an agency which is operated by, or as a result of an action of a person employed by, a mental health agency shall be addressed to the deputy director of the Division and shall be decided by the deputy director.~~

Allegations involving rights violations:

1. Of other than physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and initially decided by:
 - a. The director of the appropriate regional authority, if applicable; or
 - b. If the mental health agency is operated exclusively by a governmental entity, the director of the agency; or
2. Of physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the deputy director of the Division.

B. ~~Conditions requiring investigation:~~

- ~~1. Allegations involving conditions requiring investigation other than a client death which occurred in an agency which is operated by, or as a result of an action of a person employed by, a mental health agency shall be addressed to and initially decided by the director of the appropriate regional authority.~~
- ~~2. Allegations involving conditions requiring investigation other than a client death which occurred in an agency operated exclusively by, or as a result of an action of a person employed by, a governmental entity shall be addressed to and initially decided by the director of the agency.~~
- ~~3. Allegations involving a client death which occurred in an agency which is operated by, or as a result of an action of a person employed by, a mental health agency shall be addressed to the deputy director of the Division and shall be decided by the deputy director.~~

B. Allegations involving conditions requiring investigation:

1. Of other than a client death, which occurred in a mental health agency, or as a result of a person employed by a mental health agency, shall be addressed to and initially decided by:
 - a. The director of the appropriate regional authority, if applicable; or
 - b. If the mental health agency is operated exclusively by a governmental entity, the director of the agency; or
2. Of a client death, which occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the deputy director of the Division.

C. ~~Notice of receipt of grievance or request for investigation:~~

- ~~1. Within five days of receipt of a grievance or request for investigation, the director of the agency shall inform the person filing the grievance or request in writing that the grievance or request has been received.~~
- ~~2. Within five days of receipt of a grievance or request for investigation, the director of an agency operated exclusively by a governmental entity shall provide a copy of the grievance or request to the appropriate regional authority.~~

C. Within five days of receipt by a mental health agency of a grievance or request for investigation:

1. The director of the mental health agency shall inform the person filing the grievance or request, in writing, that the grievance or request has been received;
2. If the mental health agency is operated exclusively by a governmental entity, the director of the mental health agency shall provide a copy of the grievance to the appropriate regional authority; and
3. If the client is in need of special assistance, the agency director or deputy director shall immediately send a copy of the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency.

- D.** However the matter is initially resolved, where the client is in need of special assistance, as defined in R9-21-101, the agency director or deputy director shall immediately send a copy of the grievance or request and appointment to the Office of Human Rights and the committee with jurisdiction over the agency.

~~R9-21-404, R9-21-405, Preliminary Disposition~~

- A.** The agency director or any other official before whom a grievance or request for investigation has been initiated shall immediately take whatever action may be reasonable to protect the health, safety and security of any client, witness, individual filing the grievance or request for investigation, or individual on whose behalf the grievance or request for investigation is filed.

~~A-B.~~ Summary disposition.

1. The agency director or deputy director of the Division may summarily dispose of any grievance or a request for an investigation where the alleged rights violation or condition occurred more than one year immediately prior to the date on which the grievance or request is made.
2. An agency director or deputy director of the Division who receives a grievance or request which is primarily directed to the level or type of mental health treatment provided to a client, which can be fairly and efficiently addressed within the procedures set forth in Article 3 and in R9-21-401, and which do not directly or indirectly involve any rights set forth in A.R.S. Title 36 or Article 2, may refer the grievance ~~to the case manager~~ for resolution through the

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Individual Service Plan process or the appeal process in R9-21-401.

~~B.C.~~Disposition without investigation.

1. Within ~~five~~ seven days of receipt of a grievance or request for an investigation, an agency director or deputy director of the Division may promptly resolve a grievance or request without conducting a full investigation, where the matter:
 - a. Involves no dispute as to the facts;
 - b. Is patently frivolous; or
 - c. ~~May be~~ Is resolved fairly and efficiently within ~~five~~ seven days without a formal investigation.
2. Within ~~five~~ seven days of receipt of the grievance or request described in subsection (C)(1), the agency director or deputy director of the Division shall prepare a written, dated decision.
 - a. The decision shall explain the essential facts, why the agency director or deputy director believes that the matter ~~may be~~ is appropriately resolved without the appointment of an investigator, and the resolution of the matter.
 - b. The agency director or deputy director of the Division shall send copies of the decision to the parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03, and to anyone else having a direct interest in the matter.
3. After the expiration of the appeal period without appeal by any party, or after the exhaustion of all appeals and subject to the final decision ~~thereof on the appeal~~, the agency director or deputy director shall promptly take appropriate action and prepare and add to the case record a written, dated report of the action taken to resolve the grievance or request.

~~C.D.~~Matters requiring investigation.

1. If the matter complained of cannot be resolved without a formal investigation pursuant according to the criteria set forth in subsection ~~(B)(1)-(C)(1)~~, within ~~five~~ seven days of receipt of the grievance or request the agency director or deputy director shall prepare a written, dated appointment of an impartial investigator who, in the judgment of the agency director or deputy director, is capable of proceeding with the investigation in an objective manner but who shall not be:
 - a. Any of the persons directly involved in the rights violation or condition requiring investigation; or
 - b. A staff person who works in the same administrative unit as, except a person with direct line authority over, any person alleged to have been involved in the rights violation or condition requiring investigation.
2. Immediately upon the appointment of an investigator, the agency director or deputy director shall notify the person filing the grievance or request for investigation in writing of the appointment. The notice shall contain the name of the investigator, the procedure by which the investigation will be conducted and the method by which the person may obtain assistance or representation.

~~D.E.~~~~However the matter is initially resolved, where~~ If the a client is a client is in need of who needs special assistance ~~, as defined in R9-21-401,~~ the agency director or deputy director shall immediately send a copy of the grievance or request and appointment all future correspondence to the Office of Human Rights and the human rights committee with jurisdiction over the agency.

~~R9-21-405. R9-21-406.~~ Conduct of Investigation

- A. Within ten days of the appointment, the investigator shall hold a private, face-to-face conference with the person who filed the grievance or request for investigation to learn the relevant facts ~~which that~~ form the grounds for the grievance or request, ~~except where~~ unless the grievance or request has been initiated by the agency director or deputy director of the Division pursuant according to R9-21-402(C) – (E) R9-21-402(E).
 1. In scheduling such conference, and again at the conference, if the client appears without a designated representative, the investigator shall advise the client that:
 - a. The client may be represented by a designated representative of the client's own choice. The investigator shall also advise the client of the availability of assistance from the State Protection and Advocacy System, the Office of Human Rights, and the relevant human rights committee.
 - b. The client may ~~tape record~~ make an audio tape of the conference and all future conferences, meetings or hearings to which the client may be a party during the investigation, provided that the client notify all other parties not later than the beginning of the meeting or hearing that the client intends to do so.
 - c. In any case where the person initiating the grievance or request, or the person(s) who is alleged to have been responsible for the rights violation or condition, is a client and is in need of special assistance and is unrepresented, the investigator shall give the Office of Human Rights notice of the need for representation.
 2. Where the grievance has been initiated by the agency director or deputy director of the Division, the investigator shall promptly determine which persons have relevant information concerning the occurrence of the alleged rights violation or condition requiring investigation and proceed to interview such individuals.
- B. Within 15 days of the appointment, but only after the conference with the person initiating the grievance or request for investigation, the investigator shall hold a private, face-to-face conference with the person(s) complained of or thought to be responsible for the rights violation or condition requiring investigation to discuss the matter.

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1. In scheduling the conference with such person(s) or with any other witness, the investigator shall advise the person(s) or any other witness that:
 - a. The individual may ~~tape record~~ make an audio tape recording of the conference and all future conferences, meetings or hearings during the course of the investigation, provided that the individual must notify all other parties to such meetings or hearings not later than the beginning of the meeting or hearing if the individual intends to so record.
 - b. An employee of an inpatient facility, service provider, regional authority or the Division has an obligation to cooperate in the investigation.
 - c. Failure of an employee to cooperate may result in appropriate disciplinary action.
- C. The investigator shall gather whatever further information may seem relevant and appropriate, including interviewing additional witnesses, requesting and reviewing documents, and examining other evidence or locations.
- D. Within ten days of completing all interviews with the parties but not later than 30 days from the date of the appointment, the investigator shall prepare a written, dated report briefly describing the investigation and containing findings of fact, conclusions, and recommendations
- E. Within five days of receiving the investigator's report, the agency director or deputy director of the Division shall review the report and the case record and prepare a written, dated decision which shall either:
 1. Accept the investigator's report in whole or in part, at least with respect to the facts as found, and state a summary of findings and conclusions and the intended action of the agency director or deputy director of the Division; including disciplinary action against the person(s) responsible for the rights violation or condition requiring investigation, if appropriate, and send:
 - a. ~~The agency director or deputy director shall send copies~~ A copy of the decision to: ~~the investigator, the parties, the Office of Human Rights, and the human rights committee for persons deemed in need of special assistance.~~
 - i. The investigator;
 - ii. The individual who filed the grievance or request for investigation;
 - iii. The individual who is the subject of the grievance or request for investigation, if applicable;
 - iv. The Office of Human Rights; and
 - v. If the individual who filed the grievance or who is the subject of the grievance or request for investigation is a client who needs special assistance, the appropriate human rights committee; and
 - b. ~~The decision sent to the grievant and the client who is the subject of the grievance shall include a notice of appeal rights~~ A notice to the individual who filed the grievance or request for investigation and, if applicable, the client who is the subject of the grievance or request for investigation or, if applicable, the client's guardian, of:
 - i. If the decision is from an agency director, the client's right to appeal to the Division according to R9-21-406 and to an administrative hearing according to A.R.S. § 41-1092.03; and
 - ii. If the decision is from the deputy director of the Division, the client's right to an administrative hearing according to A.R.S. § 41-1092.03; or
 2. Reject the report for insufficiency of facts and return the matter for further investigation. In such event, the investigator shall complete the further investigation and deliver a revised report to the agency director or deputy director of the Division or designee within ten days. Upon receipt of the report, the agency director or deputy director shall proceed as provided in subsection (E)(1).
- E. Actions that an agency director or the deputy director of the Division may take according to subsection E(1) include:
 1. Identifying training or supervision for or disciplinary action against an individual responsible for a rights violation or condition requiring investigation identified during the course of investigating a grievance or request for investigation.
 2. Developing or modifying a mental health agency's policies and procedures;
 3. Notifying the regulatory entity that licensed or certified an individual according to A.R.S. Title 32, Chapter 33 of the findings from the investigation; or
 4. Imposing monetary penalties according to terms of a contract, if applicable.
- ~~F.G.~~ After the expiration of the appeal period set forth in R9-21-406, or after the exhaustion of all appeals and subject to the final decision ~~thereof on the appeal~~, the agency director or deputy director of the Division shall promptly take the action set forth in the decision and add to the case record a written, dated report of the action taken. A copy of the report shall be sent to the Office of Human Rights and the human rights committee if the client is in need of special assistance.

R9-21-407. Further Appeal to Administrative Hearing

- A. ~~Any grievant or the client who is the subject of the grievance who is dissatisfied with the decision of the deputy director of the Division may request a fair hearing before an administrative hearing officer.~~
 1. ~~Within 30 days of the date of the decision, the appealing party shall file with director of the Department a notice requesting a fair hearing.~~
 2. ~~Upon receipt of the notice, the director shall send a copy to the parties, to the deputy director of the Division, and to the Office of Human Rights and the human rights committee for clients who are in need of special assistance.~~
 3. ~~Within five days of the receipt of the notice of further appeal, the director of the Department shall appoint an impartial hearing officer. The hearing officer may not be an employee of the Department, a regional authority, or of a ser-~~

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~~vice provider under contract or subcontract with the Department. However, the Department may contract with a qualified individual to serve as the hearing officer under this rule. The director shall send copies of the appointment to the hearing officer together with the case record and to the parties including the Division.~~

- ~~4. Within five days of the appointment, the hearing officer shall inform the parties, the Office of Human Rights, and the human rights committee if the client is in need of special assistance, of the time and place of the hearing. The hearing shall be scheduled not less than 20 nor more than 30 days from the receipt of the request for fair hearing at a location convenient to all parties.~~

~~B. The hearing shall be conducted consistent with A.R.S. §§ 36-111 and 36-112 and 41-1061 et seq. (the Administrative Procedure Act), and those portions of R9-1-101 through R9-1-126 which are consistent with this Article.~~

- ~~1. The client shall have the right to be represented at the hearing by an individual chosen by the client at the client's own expense, in accordance with Rule 31(a)(3), Rules of the Supreme Court.~~

~~a. If the client has not designated a representative to assist the client at the hearing and is in need of special assistance, the human rights committee, through one of its members or the human rights advocate unless refused by the client, shall make all reasonable efforts to represent the client.~~

~~b. If the client is unrepresented and the deputy director of the Division determines the appointment of a representative to be in the client's best interest, the deputy director shall designate a representative to assist the client in the appeal.~~

- ~~2. The client or other appealing party shall have the right to present any evidence relevant to the issues under appeal and shall have the right to call and examine witnesses.~~

- ~~3. The client or other party appealing on behalf of the client shall have the right to examine all records held by the Department pertaining to the client.~~

- ~~4. Any portion of the hearing may be closed to the public if the client requests or if the hearing officer determines that it is necessary to prevent an unwarranted invasion of the client's privacy or that public disclosure would pose a substantial risk of harm to the client.~~

- ~~5. The standard of proof on all issues shall be a preponderance of the evidence.~~

- ~~6. The burden of proof on all issues shall be on the appealing party.~~

- ~~7. Within ten days of the conclusion of the hearing, the hearing officer shall prepare, date, sign, and send a written recommended decision to director of the Department, together with the case record. The recommended decision shall include findings of fact, which shall be binding on the Department for administrative purposes, and conclusions and recommendations for action as appropriate.~~

~~C. Within 20 days of the conclusion of the hearing, the director of the Department shall render a final written decision, based upon the recommendation of the hearing officer.~~

- ~~1. The decision shall include a concise statement of the facts found, a summary of the evidence relied upon, the decision and the reasons for so deciding, and a notice of the client's right to petition the director of the Department for a rehearing under R9-1-113 and to seek judicial review under A.R.S. § 36-113.~~

- ~~2. The decision shall be mailed promptly to the client, the other parties, and their designated representatives.~~

- ~~3. The Division shall arrange to have the decision explained to the client, together with the right to seek rehearing and judicial review.~~

- ~~4. Except to the extent that the decision is subject to an order for rehearing, the decision of the director is the final decision of the Department on all issues.~~

~~D. Within 15 days of the date of service of the decision of the director, the client or party appealing on behalf of the client may petition the director for a rehearing or review pursuant to R9-1-120.~~

~~R9-21-406. R9-21-407. Administrative Appeal~~

~~A. Any grievant or the client who is the subject of the grievance who is dissatisfied with the final decision of the agency director may, within 30 days of receipt of the decision, file a notice of appeal with the deputy director of the Division. The appealing party shall send copies of the notice to the other parties and their representatives and to the agency director, who shall forward the full case record to the deputy director of the Division.~~

~~B. The deputy director of the Division shall review the notice of appeal and the case record, and may discuss the matter with any of the persons involved or convene an informal conference. Within 15 days of the filing of the appeal, the deputy director of the Division shall prepare a written, dated decision which shall either:~~

- ~~1. Accept the investigator's report, in whole or in part, at least with respect to the facts as found, and affirm, modify or reject the decision of the agency director with a statement of reasons; or~~

- ~~2. Reject the investigator's report for insufficiency of facts and return the matter with instructions to the agency director for further investigation and decision. In such event, the further investigation shall be completed and a revised report and decision shall be delivered to the deputy director of the Division within ten days. Upon receipt of the report and decision, the deputy director of the Division shall render a final decision, consistent with the procedures set forth in subsection (B)(1).~~

- ~~3. A designated representative shall be afforded the opportunity to be present at any meeting or conference convened by the deputy director of the Division to which the represented party is invited.~~

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4. The deputy director of the Division shall send copies of the decision to:
 - a. The parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03;
 - b. The agency director; and
 - c. The Office of Human Rights and the human rights committee for clients who are in need of special assistance.

~~R9-21-408.~~ Judicial Review

~~A client aggrieved by a final decision of the Department may, within 30 days of receipt of a decision after a rehearing, seek judicial review of the decision, in accordance with the standards and procedures contained in A.R.S. § 12-901 et seq.~~

~~R9-21-409.~~ R9-21-408. Notice and Records

- A. Notice to clients. All clients shall be informed of their right to file a grievance or request for investigation under these rules.
 1. Notice of this grievance and investigation process shall be included in the information posted or otherwise provided to every current and new client and employee. Special efforts shall be made to inform current and new residents of mental health facilities of this process and of the right to file a grievance or request for investigation;
 2. A copy of a brief memorandum explaining these rules shall be given to every current and new resident of an inpatient facility;
 3. Such memorandum and blank copies of the forms for filing a grievance, request for investigation, and appeal shall be posted in a prominent place in plain sight on every unit of an inpatient facility or in a program operated by a service provider; and
 4. Such memoranda, forms and copies of these rules shall be available at each inpatient facility, regional authority and service provider upon request by any person at any time.
- B. Notice and oversight by the Office of Human Rights and human rights committees.
 1. Upon receipt of any grievance or request for investigation involving a client who is in need of special assistance, the agency director or deputy director of the Division shall immediately forward a copy of such grievance or request to the Office of Human Rights and the appropriate regional human rights committee.
 2. Upon receipt of such a grievance from the agency director or the deputy director of the Division, at the request of a client, or on its own initiative, the Office of Human Rights and/or the appropriate human rights committee shall assist a client in filing a grievance or request, if necessary. The Office and/or committee shall use its best efforts to see that such client is represented by an attorney, human rights advocate, committee member, or other person to protect the individual's interests and present information on the client's behalf. The Office and/or committee shall maintain a list of attorneys and other representatives, including the state protection and advocacy system, available to assist clients.
 3. Whenever the human rights committee has reason to believe that a rights violation involving abuse or a dangerous condition requiring investigation, including a client death, has occurred or currently exists, or that any rights violation or condition requiring investigation occurred or exists which involves a client who is in need of special assistance, it may, upon written notice to the official before whom the matter is pending, become a party to the grievance or request. As a party it shall receive copies of all reports, plans, appeals, notices and other significant documents relevant to the resolution of the grievance or request and be able to appeal any finding or decision.
 4. The Office of Human Rights shall assist clients in resolving grievances ~~pursuant~~ according to R9-21-105.
- C. Notification of other persons.
 1. Whenever any rule, regulation, statute, or other law requires notification of a law enforcement officer, public official, medical examiner, or other person that an incident involving the death, abuse, neglect, or threat to a client has occurred, or that there exists a dangerous condition or event, such notice shall be given as required by law.
 2. An agency director shall immediately notify the deputy director of the Division when:
 - a. A client brings criminal charges against an employee;
 - b. An employee brings criminal charges against a client;
 - c. An employee or client is indicted or convicted because of any action required to be investigated by this Article; or
 - d. A client of an inpatient facility, mental health agency, or service provider dies. The agency director shall report such death ~~pursuant~~ according to the Department's policy on the reporting and investigation of deaths.
 - e. A client of an inpatient facility, agency, or service provider allegedly is physically or sexually abused.
 3. The investigation by the Department provided for by this Article is independent of any investigation conducted by police, the county attorney, or other authority.
- D. Case records.
 1. A file, known as the case record, shall be kept for each grievance or request for investigation which is received by the Division including ASH, regional authority or service provider under contract or subcontract with the Department. The record shall include the grievance or request, the docket number assigned by the Department, the names of all persons interviewed and the dates of those interviews, either a taped or written summary of those interviews, a summary of documents reviewed, copies of memoranda generated by the investigation, the investigator's report, the agency director's decision, and all documents relating to any appeal.

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2. The investigator shall maintain possession of the case record until the investigation report is submitted. Thereafter, the agency director shall maintain control over the case record, except when the matter is on appeal. During any appeal, the record will be in the custody of the official hearing or deciding the appeal.

E. Public logs.

1. The Department shall maintain a public log of all deaths and non-frivolous grievances or requests for investigation for all inpatient facilities, agencies, and service providers which it operates, funds, or supervises. The agency director of each facility or mental health agency shall forward to the Department all information necessary for the accurate and timely maintenance of the public log.
2. The public log shall not include personal identities but shall be a public record, available for inspection and copying by any person.
3. With respect to each grievance or request for investigation, the Department's public log shall contain:
 - a. A docket number, consisting of a symbol for the agency, the last two digits of the year and a serial number assigned by the Department;
 - b. A substantive but concise description of the grievance or request for investigation;
 - c. The date of the filing of grievance;
 - d. The date of the initial decision or appointment of investigator;
 - e. The date of the filing of the investigator's final report;
 - f. A substantive but concise description of the investigator's final report;
 - g. The dates of all subsequent decisions, appeals, or other relevant events; and
 - h. A substantive but concise description of the final decision and the action taken by the agency director or deputy director of the Division.

~~R9-21-410. R9-21-409.~~ Miscellaneous

A. ~~Client protection. The agency director or any other official before whom a grievance or request for investigation is pending shall immediately take whatever action may be reasonable to protect the health, safety and security of any client, complainant or witness.~~

B. Disqualification of official. The agency director, deputy director of the Division, investigator, or any other official with authority to act on a grievance or request for investigation shall disqualify themselves from acting, if such official cannot act on the matter impartially and objectively, in fact or in appearance. In the event of such disqualification, the official shall forthwith prepare and forward a written, dated memorandum explaining the reasons for the decision to the deputy director of the Division or designee or director of the Department or designee, as appropriate, who shall, within ten days of receipt ~~thereof of the memorandum~~, take such steps as are necessary to resolve the grievance in an impartial, objective manner.

~~C.B.~~ Request for extension of time.

1. The investigator or any other official of a mental health agency acting ~~pursuant~~ according to this Article may secure an extension of any time limit provided in this Article with the permission of the director of the regional authority.
2. The investigator or any other official of an inpatient facility acting ~~pursuant~~ according to this Article may secure an extension of any time limit provided in this Article with the permission of the deputy director of the Division.
3. The investigator or any other official of the office of the deputy director of the Division acting ~~pursuant~~ according to this Article may secure an extension of any time limit provided in this Article with the permission of the director of the Department.
4. An extension of time may only be granted upon a showing of necessity and a showing that the delay will not pose a threat to the safety or security of the client.
5. A request for ~~such~~ extension shall be in writing, with copies to all parties. The request shall explain why an extension is needed and propose a new time limit which does not unreasonably postpone a final resolution of the matter.
6. Such request shall be submitted to and acted upon by the director of the regional authority, deputy director of the Division, or director of the Department, as appropriate, prior to the expiration of the original time limit. Failure of the relevant official to act within the time allowed shall constitute a denial of the request for an extension.

~~D.C.~~ Procedural irregularities.

1. Any party may protest the failure or refusal of any official with responsibility to take action in accord with the procedural requirements of this Article, including the time limits, by filing with the deputy director of the Division a written protest. A protest concerning the failure or refusal to take action by the deputy director of the Division or designee should be filed with the director of the Department.
2. Within ten days of the filing of such a protest, the official with whom it is filed shall take appropriate action to ensure that if there is or was a violation of a procedure or timeline, it is promptly corrected, including, if appropriate, disciplinary action against the official responsible for the violation or by removal of an investigator or hearing officer and the appointment of a substitute.

~~E.D.~~ Deputy director's or director's investigation.

1. The deputy director of the Division or director of the Department may at any time order that a special investigator review and report directly to the director or deputy director as to the facts of a grievance or condition requiring inves-

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- tigation, including a death or other matter.
2. The special investigator, deputy director and director shall comply with the time limits and other procedures for an investigation set forth in this Article.
 3. Any final decision issued by the deputy director of the Division or the director of the Department based on such an investigation under this rule is appealable as provided in R9-21-407 et seq.
 4. Nothing in this Article shall prevent the Department or the Division from conducting an investigation independent of these rules.

R9-21-410. **Renumbered**